

IDAHO LAWS

A Guide For Women and Families



A Resource Handbook
Published by the
Idaho Women's Commission



DIRK KEMPTHORNE
GOVERNOR

A MESSAGE FROM DIRK KEMPTHORNE
Governor of Idaho

Since its initial printing over two decades ago, *Idaho Laws, A Guide For Women and Families* has been a valuable resource for anyone who wants to know more about state and federal laws and programs that affect the lives of women.

This booklet provides valuable answers to common questions, such as who is obligated to make repairs on a rental property. It also offers assistance on complicated issues, like how to establish and maintain credit

Whether you are concerned about your child's right to public education, the legal status of a common law marriage, or the intricacies of various retirement plans, you will find the material in this publication to be very useful.

On behalf of all Idahoans, I commend the Idaho Women's Commission for supporting the revision, publication, and distribution of this simple and effective booklet for so many years. I hope it will be a great resource for you.

Best wishes.

Sincerely,

DIRK KEMPTHORNE
Governor

The Idaho Women’s Commission

The Commission was founded in 1965 as the Governor’s Commission on the Status of Women under executive order by Governor Robert E. Smylie, and was patterned after the federal Commission on the Status of Women. The Commission was created as a statutory commission under Idaho Code in 1970 and given the name Commission on Women’s Programs. During the 1997 legislative session, the name of the Commission was changed to the Idaho Women’s Commission. The agency is a part of the Office of the Governor.

Since 1965, the Commission has been an advocate for women in all walks of life. Its mission is to encourage and motivate women to increase their participation in their communities, the state and the nation. Through educational and informational efforts, the Commission works toward an environment in which all women within the state are ensured equal opportunities and protection in all aspects of their personal and professional lives.

Volunteer Commissioners, appointed by the Governor for three-year terms, work with other state agencies and women’s and children’s organizations on specific projects or programs. These vary according to statewide and community needs.

For over 30 years, the Commission has researched and advocated for legislation and social change ranging from equal pay and employment opportunities to child custody and support. Some of its current projects include monitoring proposed legislation affecting women and families, providing information and referrals for women across the state on legal, political and economic issues and offering educational classes on how Idaho laws impact areas of interest to women. Currently, the Commission is comprised of 7 nonpartisan members from various regions of the State, and a director.

Fran Dingel, Chair Boise	Kitty Kunz Pocatello
Linda Hurlbutt, Vice Chair Boise	Carolyn Durant Lewiston
Shirley Kaiyou, Secretary Fort Hall	Deborah Burke Coeur d’Alene
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Further information about the Commission is available through its office by writing:

P.O. Box 83720
Boise, Idaho 83720-0111
Or by calling: 208/334-2110
The toll-free number is: 1/800/643-7798
The e-mail address is: tbogert@women.state.id.us
The Internet address is: www.women.idaho.gov

PLEASE CONSIDER:

The Idaho Women's Commission is proud to offer this useful handbook to all Idaho citizens, not only to women.

The Commission wishes to offer this publication at no charge to those truly in need. We do, however, request a donation from those who can afford it. The cost of this booklet, including postage, is about \$4.00.

Please send your donation to:

**The Idaho Women's Commission
P.O. Box 83720
Boise, Idaho 83720-0111**

THANK YOU!

The Commission would like to acknowledge the Idaho Law Foundation and its "IOLTA" grant program for its assistance in making this publication possible. We are very pleased to also offer a Spanish translation and wish to thank a generous grant from the U.S. Women's Bureau for making this possible.

This booklet is not designed to contain legal advice. It is merely a listing of Idaho and Federal laws that pertain to various issues. The Idaho Women's Commission suggests that if you have detailed questions or face any legal difficulty, you should contact a qualified attorney. The Idaho State Bar Association keeps on file names of attorneys around the state. To contact them, please visit or write at 525 West Jefferson Street, Boise, Idaho, 83702, or call at 208/334-4500.

The Idaho Women’s Commission extends its appreciation and gratitude to all of those who spent countless hours consulting on, revising and updating “Idaho Laws, A Guide for Women and Families.”

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IDAHO LAWS, A GUIDE FOR WOMEN AND FAMILIES

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CHAPTER 1

CIVIC RIGHTS AND RESPONSIBILITIES

A. THE DIFFERENCE BETWEEN DOMICILE AND RESIDENCE

Although the terms "domicile" and "residence" are often used interchangeably, their legal meaning can be very different. "Residence" generally means living in a particular place; "domicile" means living in that place with the intent to make it your permanent home. "Residence" is the most frequently used word, but its meaning and the length of time required to establish residency varies depending upon whether you are seeking to vote, obtain a divorce, pay in-state tuition, obtain a hunting or fishing license, etc. Your residence may differ from your spouse's residence, depending upon your individual circumstances. Be aware that the two terms are not legally identical.

B. VOTING

Every United States citizen eighteen years or older has the right to vote. You must register to vote and meet the applicable residency requirements to exercise your voting right. You may register with your precinct registrar at least 17 days before the election, or with the county clerk at least ten days prior to the election. Or, you may register the day of an election at the voting place. You will need personal identification and proof of your address, such as a letter addressed to you or confirmation of utility service. If you have moved or changed your name since you last voted, you must reregister.

Voting by absentee ballot is possible when you are in the armed forces, will be out of the state or county on election day, or are physically unable to vote at the designated polling place. A registered voter may apply to vote by absentee ballot by mail or fax no later than 5 p.m. the day before the election and no earlier than 60 days before the election. A person may also apply in person at least 48 hours before the election. In an emergency situation, which leaves one physically unable to vote at the designated place, that person may apply for an absentee ballot on the day of the election. The absentee ballot may be delivered to you in person, by mail, by fax, or by other appropriate means.

Persons convicted of certain crimes lose their right to vote; however, voting rights may be restored upon completion of a criminal sentence.

C. JURY SERVICE

A citizen may not be excluded from jury service because of race, religion, gender, national origin, or economic status. Prospective jurors must be citizens, at least 18 years old and residents of the county. They may be disqualified if they cannot read, speak and understand English, have a disability that prevents them from serving, or have lost the right to vote because of a felony criminal conviction. Individuals over 70 years old may be excused upon written request.

Other persons may be excused upon the showing of undue hardship, extreme inconvenience or public necessity. Nursing mothers may be granted a postponement. Postponement for other medical reasons must be documented by a medical professional.

Persons are selected for jury service at random from a master jury list. The master jury list for a county consists of the voter registration lists supplemented with names of utility customers, property taxpayers, motor vehicle registrants and driver's license applicants.

D. FAIRNESS AND EQUALITY IN IDAHO COURTS

The Idaho Supreme Court appointed a committee to promote fairness and equality in Idaho's courts. As a result, in 1992 they republished the "COURT CONDUCT HANDBOOK" with the consent of the original publisher, the Massachusetts Supreme Judicial Court. These guidelines were distributed throughout Idaho's court system. They are to be used to identify, eliminate and prevent gender, racial or ethnic bias of every kind on the part of judges, juries, attorneys and other court personnel: a) in consideration of the litigant's cause, b) in the conduct of court personnel and c) in equal employment opportunities. It alerts judges to ensure that appropriate steps are taken to provide a neutral and unbiased forum for all. The handbook can be found at the local court library or in the county clerk's office.

E. HOLDING PUBLIC OFFICE

All citizens are encouraged to hold public offices, including political and judicial offices. Women are urged to participate in government as elected officials and administrative and judicial officers as fully as men. More information on qualifications and requirements for these offices can be obtained from your county clerk's office, your local League of Women Voters' representative or your political party. Primary election applications and instructions (deadlines, filing fees, required number of signatures, etc.) are available from your county clerk's office for county offices, from your city clerk's office for city offices and from the Secretary of State's office for state offices.

Many public offices are also filled by appointment. While many of these offices are without pay, public service is very rewarding and critical to the success of our government. For more information about these appointments, contact city, county, or state offices.

F. ENACTING LAWS

Each person's contribution is important in enacting our laws. Be sure to vote to elect your state and federal officials. Let your opinion on a particular matter be known by urging your state or national senator or representative to vote a particular way on a bill. Contact your state legislator by writing or calling at the Statehouse, Boise, ID 83720-0038 (House) or 83720-0081 (Senate). Or, you may call the Legislative Information Center at 208/332-1000 to have a brief message delivered to your Senator or Representative. The local telephone for the U.S. Senators and Representatives are as follows: Senator Larry E. Craig - 208/342-7985; Senator Mike Crapo - 208/334-1776; Representative Mike Simpson - 208/334-1953; C.L. Butch Otter - 208/336-9831.

The Legislative Information Center can also give you updated information on specific bills. A WATS number (1-800-626-0471) is also maintained during legislative sessions to provide legislative information and deliver messages. It is most important to be timely in your contacts so your legislator can consider your recommendations before voting. Contact your Federal Congressperson at her/his local office or office in Washington, D.C. The League of Women Voters, as well as the Legislative Services Office, keeps updated lists of legislators' state and national addresses and telephone numbers.

If you wish to learn how each legislative session is organized, a Legislative Directory is issued early in each session after key positions are chosen and assignment to committees are made. It also lists legislators according to their districts, with addresses and phone numbers for contacting them. A copy can be obtained at a nominal cost from the Legislative Services Office, Statehouse, Boise, ID 83720-0054, or call 208-334-2475. It also may be found in most public libraries.

1. HOW BILLS BECOME LAWS

Briefly, most bills are written by the Legislative Services Office, Research and Legislation, at the request of a legislator. Budget bills are written by the Legislative Services Office, Budget and Policy Analysis. Generally, written bills are introduced through a committee to the floor of the House or Senate.

FIRST READING: The bill receives a number, its title is read aloud, it is printed and then it is sent to the relevant committee, usually where it was introduced. The committee reviews it and may hold a public hearing. If so, you may appear at the hearing or write to the committee chairperson or any member. The committee then votes to hold (kill) the bill or send it to the floor with a "do pass" recommendation or without recommendation.

SECOND READING: The bill title is read a second time.

THIRD READING: Usually a day later, the bill title is read a third time. Bills are not read at length if all members agree. Members may discuss the bill and then vote to pass or not to pass it. They can also amend the bill.

SUSPENSION OF RULES: Parts of the process can be shortened or lengthened by a two-thirds vote to suspend the rules.

If the bill passes, it is sent to the other chamber where the same process ensues. If it passes again, it is sent to the Governor who signs it, allows it to become law without a signature, or vetoes it. The Legislature can override a veto if both houses vote by a two-thirds majority to do so. If the legislature adjourns for the year before the veto, the veto is final.

2. HOW TO FOLLOW LEGISLATION

Each day while the Legislature is in session, most libraries receive printed copies of the bills. You can read these for specific information on what is contained in the bill. An information sheet (Mini Data), giving the status of each bill (where it is in relation to the enactment process outlined above) is also mailed to these libraries daily.

Beginning with the 1996 Legislative Session, Idaho has joined the electronic age, offering access to the legislative information on the Internet's Worldwide Web. Using simple search tools, anyone connected to the system can learn the history and current status of legislation and read the full text of bills. Bill information can be printed out or downloaded to personal computers without charge. Information will be updated after adjournment each night. During the session, committee schedules and floor calendars will be available to help citizens follow the progress of legislation and know when they can testify on particular bills and proposals. The Idaho Legislature's information can be reached on the Internet either through the state of Idaho home page, or by entering the following (URL) address: <http://www.state.id.us/legislat/legislat.html>.

For additional up-to-the-minute information on bills, call the Legislative Information office.

After many legislative sessions conclude, legislative or governor's task forces are formed to research pressing issues. At the end of the 1996 session, for instance, task forces on Medicare reform and special education were formed. The task force members gather information from various sources, including citizen input. The Legislative Services Office has additional information about any current task forces and their activity.

3. THE IDAHO CODE

The Idaho Code is a listing of all of the laws passed by the Idaho State Legislature. New laws are placed in the Idaho Code after each session of the legislature. Copies of the Idaho Code can be found in the county courthouse and many libraries throughout the state. There are 26 volumes, each containing a specific group of laws (e.g., civil, criminal, domestic, tax, etc.). The most recently enacted laws are found in the supplement located at the back of each volume. References noted in this booklet can be found in the Idaho Code. Your librarian can show you how to find them.

In addition to codified laws, many state government departments and agencies are allowed to make rules to govern their responsibilities and duties. Some of these rules must be approved by the legislature as well. For more information about agency rule making, contact the Legislative Services Office, the agency in question, or the Idaho State Law library.

G. CITIZENSHIP AND IMMIGRATION LAW

1. CITIZENSHIP

Persons living in the United States can be divided into two groups: citizens and noncitizens commonly called aliens. Noncitizens or aliens can be further placed into two categories: immigrants, known in immigration terms as lawful permanent residents (LPR) and nonimmigrants.

Citizenship guarantees certain rights and privileges, such as the right to vote and serve on juries, which are not available to noncitizens. United States citizenship can be obtained by birth, derivation from citizen parents, or naturalization.

The clearest proof of citizenship is a certified birth certificate showing birth in the United States. This may be obtained from the Bureau of Vital Statistics in your state of birth. Alternative proof such as baptismal records, census records, military records or a United States passport can be used if a birth certificate is unavailable. If you derive citizenship from your parents, you can obtain a Certificate of Citizenship from the Bureau of Citizenship and Immigration Services (BCIS). A naturalized citizen obtains a Naturalization Certificate from BCIS. Information and forms are available at the nearest BCIS office.

2. NATURALIZATION

Naturalization is the judicial process through which a noncitizen, or alien, becomes a citizen. The qualifications and procedures are outlined in the Immigration and Nationality Act (INA), which is found in Title 8 of the United States Codes and the Code of Federal Regulations. To be eligible, you must be at least 18 years old, be a lawful permanent resident

of the United States for five years (three years if married to a U.S. citizen) and be a person of good moral character. You must also demonstrate a knowledge of United States history and government, as well as the ability to speak, read and write English. Information and applications are available at the nearest BCIS office.

3. LAWFUL PERMANENT RESIDENCE (LPR) and NONIMMIGRANTS

Our immigration laws spell out the qualifications that aliens must have in order to come into this country. Lawful permanent resident or immigrant status may be based on marriage to a citizen, or other specified family relationship with either a citizen or lawful permanent resident. The Immigration and Naturalization Act (INA) severely limits the availability of LPR status. Further, the determination of eligibility for LPR status depends on admissibility criteria such as quotas, preference categories, prior deportations and waivers for any grounds of exclusion.

If a noncitizen in the United States can establish eligibility for LPR status, he or she can petition for an immigrant visa through the local BCIS district office. A noncitizen or alien outside the United States can apply at an American consulate abroad. Because the process is complex and the burden of proof is on the petitioner, you are advised to consult with legal counsel versed in immigration law. General information is available at the nearest BCIS office and at any American consulate abroad.

Admission to this country is available to nonimmigrants who are coming for a specific reason and for a temporary period. Nonimmigrants may obtain visas as visitors, exchange students, temporary workers and fiancées or fiancés. If you seek one of these types of visas, you must be clearly admissible at the time of admission. If you are not admissible, you may be "excluded" or denied entry to this country. To challenge the determination of inadmissibility, a nonimmigrant may ask for a hearing before an Immigration Judge to review the determination and perhaps apply for a waiver on the grounds of excludability. You are well advised to consult with legal counsel versed in immigration law.

4. REFUGEES

Asylum is available to refugees who can prove they fear persecution in their native country because of their race, religion, political opinion, nationality or membership in a particular social group. Because there is a heavy burden of proof, it is recommended that the asylum applicant seek legal counsel who is experienced in asylum matters. General information is available at the nearest BCIS office, but refugees should be cautioned about the risks of arrest by Bureau of Immigration and Customs Enforcement (BICE) if they voluntarily present themselves at a BCIS or BICE office.

5. IMMIGRATION REFORM AND CONTROL ACT OF 1986 (IRCA)

By passing the Immigration Reform and Control Act of 1986 (IRCA), Congress attempted to gain some control of this country's borders. IRCA provided amnesty to certain aliens residing in the U.S. unlawfully. Qualified aliens could adjust to lawful permanent resident status after the passage of a certain period of time. When adjustment applications are filed, applicants must also show that they have a basic knowledge of English and American civics.

The IRCA imposes sanctions of up to \$10,000 per violation on all U.S. employers that hire employees who are not either U.S. citizens or aliens authorized to work by BCIS. Sanctions are also imposed on employers who fail to verify the legal right to work of all persons hired after November 6, 1986. Further, IRCA provides penalties for employment discrimination based on immigration status.

6. THE IMMIGRATION ACT OF 1990 (IMMACT 90)

The Immigration Act of 1990 (IMMACT 90) changed and clarified the types of nonimmigrant visas available, increased the numerical quota levels for immigrants and refugees, provided for investor visas and established a new category known as temporary protected status (TPS). TPS may be granted to aliens who are imperiled in their home countries by armed conflict, natural disaster, or other temporary conditions. Under IMMACT 90, aliens convicted of criminal offenses may be deported more quickly than under the prior law.

Immigration law is complex and constantly changing. Aliens are cautioned to obtain advice from legal counsel versed in this area of the law before voluntarily seeking assistance at a BCIS or BICE office.

In Idaho, the district office is at:

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services and
Bureau of Immigration and Customs Enforcement
1185 S. Vinnell Way
Boise, Idaho 83709
1/800/375-5283
www.immigration.gov

7. ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT (IIRAIRA)

In 1996, the 104th Congress passed and the President signed into law the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA). IIRAIRA was signed as an effort to curb illegal immigration. However, it also includes many provisions that have affected American families, legal immigrants and others seeking to enter the United States legally. In fact, several members of Congress have introduced legislation that would address the problems resulting from the 1996 laws. However, until now, the 1996 law remains relatively unchanged.

Some of the most hotly debated provisions of IIRAIRA include:

AGGRAVATED FELONIES: Immigrants convicted of a crime defined by immigration law as an "aggravated felony" are removable and are not eligible for relief from removal. Initially, only the crimes of murder, drug trafficking and firearms trafficking constituted aggravated felonies. Additionally, a domestic battery can constitute a removable offense. However, under IIRAIRA, some minor crimes (e.g., shoplifting) constitute aggravated felonies. Furthermore, a legal immigrant may be removed for an offense committed years ago, even if the crime was not then defined as an aggravated felony nor a removable offense.

BARS TO ADMISSIBILITY: IIRAIRA created new bars to admissibility to the U.S. for people who have been unlawfully present in the U.S. for six months or longer. The period of unlawful presence in the U.S. starts to count on April 1, 1997, the date of enactment of IIRAIRA.

EXPEDITED REMOVAL: IIRAIRA created a new expedited removal process in effect at all U.S. ports of entry. Under this expedited process, persons attempting to enter the U.S. with fraudulent documents or no documents can be summarily removed from the U.S. by a Bureau of Immigration and Customs Enforcement or Bureau of Customs and Border Patrol (BCBP) inspector at the port of entry without a hearing. Additionally, persons who attempt to enter by what the BCBP inspector believes to be "misrepresentation" may be similarly removed. The decision of the BCBP inspector is reviewed only by a supervisor, and is non-reviewable by the courts.

JUDICIAL REVIEW: Under the IIRAIRA, virtually all discretionary decisions affording relief to eligible individuals are no longer reviewable by a court.

H. SOCIAL SECURITY NUMBERS

Every person working in the United States must have a Social Security number. Beginning with the 1991 tax year, every child over the age of one must have a Social Security number for tax purposes. A Social Security number may be obtained from your local Social Security office either by mail or in person. To obtain a Social Security number, a birth certificate and another form of identification, such as a vaccination record or a driver's license, are required. To obtain a Social Security number by mail, the original or certified copies of the documents must be provided along with a completed application form.

If you change your name for any reason, you should change the name under which your Social Security number is listed. You are not required to notify the state or federal taxing agencies of a name change. However, the taxing agencies will verify the name used on your tax return with the records of the Social Security Administration (SSA). If you file a return with a name other than the name on record with SSA, a delay will occur in processing your return and mailing your refund. To protect your privacy, it is a good idea not to use your Social Security number for purposes other than reporting Social Security and income taxes. For example, you do not have to use your Social Security number on your driver's license.

For more information, contact your regional Social Security office. The telephone number should be listed in the telephone directory under U.S. Government.

I. PROTECTION FROM DISCRIMINATION

Discrimination based on race, color, national origin, religion, or sex is prohibited by Title VII of the 1964 Civil Rights Act, a federal law. Another federal law, the Age Discrimination in Employment Act of 1967 prohibits discrimination against persons who are 40 years of age or over.

The Americans with Disabilities Act of 1990 protects persons with disabilities from discrimination in the areas of employment, access to places of public accommodation, transportation facilities, state and local government services, and telecommunications.

The Americans with Disabilities Act (ADA) of 1990 applies to employers, employment agencies, labor organizations or joint labor management committees. It requires equal opportunity in the selection and hiring of qualified applicants with disabilities and requires equal treatment, promotions and benefits. Employers may not make employment inquiries about an applicant's disability or conduct preemployment medical exams. They may ask if applicants can perform specific job functions if they are essential to the job and may condition a job offer on the results of a medical exam, but only if the exam is required for all entering employees in similar jobs.

The Act also requires reasonable accommodation for applicants and workers with disabilities when such accommodation would not impose an undue hardship. Reasonable accommodations may include making facilities more accessible, job restructuring, part time or modified work schedule, modifications to examinations or training, the provision of qualified trainers or interpreters and/or other similar accommodations.

For the accommodation to be an undue hardship, it must require significant difficulty or expense. Factors included to make these decisions could be the nature or cost of the accommodations, the resources and size of the business and the impact the accommodations would have on the facility. Individuals can file complaints with the Equal Employment Opportunity Commission or file private lawsuits within 180 days of a violation.

a. Public Accommodations

Public accommodations operated by private entities such as motels, hotels, restaurants, theaters, stores, offices, museums, parks, schools, gyms and social service agencies may not prohibit any individual with a disability from the full and equal enjoyment of the goods, services and facilities of any of these places. Auxiliary aids and services are required unless the business can demonstrate undue hardship.

For existing facilities, barriers must be removed when such removal is readily achievable. If not, alternative methods of making goods and services available must be in place. New facilities must be accessible unless structurally impractical. Exceptions to these requirements are bona fide private clubs and religious groups. Individuals may bring private lawsuits to obtain a court order to stop discrimination, but money damages cannot be awarded. Individuals can also file complaints with the State Attorney General, who may file lawsuits to stop discrimination and obtain money damages and penalties.

b. Transportation

The ADA requires that newly purchased and leased bus and rail vehicles by public or private entities must be accessible. Public transit authorities must provide comparable service to individuals who cannot use fixed route systems unless it would be an undue burden. New bus stations and alterations to existing rail systems must have one accessible car per train. Key rail stations must also be accessible unless granted an exception. Complaints can be made to the State or Federal Department of Transportation.

c. Telecommunications

The ADA requires that telecommunication relay services be provided for individuals who have a hearing or speech impairment which would enable them to engage in communication

with a hearing individual in a manner which is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment.

For further information contact the Idaho ADA Task Force at 208/344-5590.

Idaho state law also protects persons from discrimination. The Idaho Human Rights Act, Chapter 59, Title 67 of the Idaho Code, was passed by the Idaho Legislature in 1969. Its purpose is:

[t]o secure for all individuals within the state, freedom from discrimination because of race, color, religion, sex or national origin in connection with employment, public accommodations, education and real property transactions and discrimination because of age in connection with employment and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health and general welfare and to promote the interest, rights and privileges of individuals within the state.

The Idaho Human Rights Act is administered by the Idaho Human Rights Commission. Persons who believe they may have experienced discrimination in employment, access to housing, education or public accommodations may contact the Human Rights Commission in person at 1109 Main Street, Owyhee Plaza Hotel, Suite 400, Boise, Idaho; by mail at P.O. Box 83720, Boise, ID 83720-0040; or by telephone at (208) 334-2873, toll free at 1-888-249-7025; or TTY/TDD (208) 334-4751. Complaints of discrimination must be filed with the Idaho Human Rights Commission before other avenues for legal redress may be used.

CHAPTER 2 EDUCATION

A. ELEMENTARY EDUCATION

A parent or guardian of any child who is at least seven years old at the beginning of the school year, but not yet 16, is required by Idaho law to have that child instructed in subjects commonly and usually taught in the public schools of the State of Idaho. Idaho Code 33-202 requires a child be instructed in a public, private or parochial school, unless the child is comparably instructed. Kindergarten, however, is an option that school districts may elect to provide.

The law requires that a child be five years old by September 1st of the school year to enter kindergarten or six by September 1st to enter first grade. If a child has attended an out-of-state kindergarten for 450 hours, the child is allowed to enter first grade even if the child is not six years old by September 1st. The school age of resident exceptional/disabled children is three.

1. MINIMUM IMMUNIZATION REQUIREMENTS

To enroll your child in school, all school districts require the child to be immunized. Minimum immunization requirements for Idaho are four doses of diphtheria, tetanus and pertussis (whooping cough) vaccine (DPT), three doses of polio vaccine and one dose of measles, mumps and rubella (MMR). By law, official immunization records must be presented in order to enroll your child in school. Keep these records in a safe place. Unless these official records can be provided your child will have to go through the whole series of shots again before being admitted, costing time, money and distress to the child. Exemptions from this immunization requirement may be obtained from your physician or from the District Health Department.

The board of trustees of each school is required by law to exclude from school pupils who are diagnosed or suspected of having a contagious or infectious disease, or who are not immune and have been exposed to a contagious or infectious disease.

2. DUAL ENROLLMENT

The Idaho Code requires that the parent or guardian of a school-age child who is enrolled in a nonpublic school be allowed to enroll that student in public school for “dual enrollment” purposes. This allows the student who participates in dual enrollment to also participate in public school activities and/or academic programs that may otherwise be unavailable.

B. EDUCATION FOR CHILDREN WITH DISABILITIES

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 et seq. guarantees that children with disabilities which affect their education or ability to attend school are entitled to special education and related services, including special transportation, physical, occupational and speech therapy, or other supportive services necessary for the child to benefit from the educational program.

Similar services must be provided to children from birth to five years old. The programs must be individually designed with parental participation and consent and included in a

written plan tailored to the child's unique needs. If parents disagree with the program offered by the school, they may request a hearing before an impartial hearing officer to resolve disagreements. Parents may be entitled to recover attorneys' fees and costs from the school district. Children not covered under the IDEA, such as children with attention deficit disorder, may still be eligible for supplemental services under Section 504 of the Rehabilitation Act.

Information on education for children with disabilities is available from CO-AD, Inc., 4477 Emerald Street, Suite B-100, Boise, Idaho 83706, phone (208) 336-5353, or toll-free 1-800-632-5125 (V/TDD).

Specialized career education and other assistance in obtaining or returning to work is available for persons with disabilities who have a substantial impediment to employment but who could be employed with proper vocational rehabilitation services. For information on vocational services for persons with disabilities contact Idaho Division of Vocational Rehabilitation, at (208) 327-7411, or (208) 327-7040 (TDD).

C. TITLE IX - DISCRIMINATION PROHIBITED

Title IX of the Education Amendments of 1972 reads "no person shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance." This Act, passed by Congress in 1972, forbids discrimination based on sex and applies to school systems, including vocational and higher education institutions. With rare exceptions, discrimination based on sex is prohibited in recruitment, admission, educational programs and activities, counseling and aptitude testing and financial and employment assistance. Discrimination is also prohibited with regard to marital or parental status. Title IX regulations call for the equitable treatment of both sexes in physical education facilities, athletics and sports.

Discrimination based on sex or on marital or parental status is also prohibited in school employment, pay, employee benefits, help wanted advertising and preemployment inquiries under Title VII of the Civil Rights Act of 1964. Idaho Code 67-5901 was enacted by the Idaho Legislature in 1969. (See Chapter 1, Protection from Discrimination).

The Idaho Human Rights Commission was established by law as the agency that receives complaints, conducts investigations and hearings for violation of Idaho Code 67-5901. Complaints based on sex discrimination in education may be forwarded to a number of agencies, including the Idaho Human Rights Commission, 1109 Main St., Owyhee Plaza, Suite 400, Boise, Idaho 83720-0040, (208) 334-2873, FAX (208) 334-2664. You may also file a discrimination complaint with school authorities, a local school board, an attorney, or the Office for Civil Rights, Region 10, Seattle, WA 98101.

D. CENTERS FOR NEW DIRECTIONS

The Centers for New Directions offer free services to single parents and displaced homemakers. These services include personal, career and educational counseling, preparation for employment and education, life skill development, job-seeking and job-keeping classes and other supportive services. The Centers also have a limited number of financial stipends for participants wishing to enter a nontraditional vocational education program.

The Centers for New Directions are located regionally on the campuses of six Idaho colleges. For more information, contact the center nearest to you:

IDAHO CENTERS FOR NEW DIRECTIONS

Center For New Directions
North Idaho College
1000 West Garden
Coeur d'Alene, ID 83814
208/769-3445 - FAX: 208/769-3367

Center For New Directions
Lewis Clark State College
500 8th Avenue
Lewiston, ID 83501
208/792-2331 or 1/800/879-0454

Center For New Directions
Boise State University
1910 University Drive
Boise, ID 83725
208/426-4026

Center For New Directions
College of Southern Idaho
315 Falls Avenue
P.O. Box 1238
Twin Falls, ID 83301
208/733-9554, Ext. 2680 or 1/800/680-0274, Ext. 2680

Center For New Directions
Idaho State University
Bessie Katsilometes, Director
Campus Box 8380
Pocatello, ID 83209
208/282-2454

Center For New Directions
Eastern Idaho Technical College
1600 South 2500 East
Idaho Falls, ID 83404
208/524-3000, Ext. 3318 or 1/800/662-0261
State Division of Vocational Education

Idaho Division of Professional and
Technical Education
650 West State Street
P.O. Box 83720
Boise, ID 83720-0095
208/334-3216
Coordinator: Shirley Silver

E. HIGHER EDUCATION IN IDAHO

The State of Idaho provides its students with a comprehensive post secondary education system of public and private institutions offering both academic and vocational courses of study. This system offers a wide range of opportunity whatever the students' interests and skills.

Each of the public institutions listed below has special programs for women, recognizing that women sometimes have unique needs and interests. Some of those programs include women's studies programs, women's centers for students and Centers for New Directions, a program for divorced or widowed women or women with other special needs. Each of the public institutions also has special programs for individuals entering higher education at an older age than other students.

The public institutions of higher education in Idaho are: University of Idaho, Moscow; Lewis-Clark State College, Lewiston; Boise State University, Boise; and Idaho State University, Pocatello. Idaho also has two, 2-year community colleges: North Idaho College in Coeur d'Alene and College of Southern Idaho in Twin Falls.

CHAPTER 3

EMPLOYMENT

A. WAGES

“Wages” is defined as “compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, or commission basis.”

Idaho law requires employers to pay wages due employees at least once during each calendar month on regular paydays designated in advance by the employer. Generally, an employee should be paid within fifteen days of the end of a pay period. Employers may not withhold any portion of an employee’s wages unless the employer is required to do so by law (e.g. state and federal tax and child support withholding garnishments) or the employer has written authorization from the employee for the withholding (e.g., health insurance premiums for dependents). An itemized statement of deductions must be provided to the employee for each pay period.

Both Idaho and federal law have minimum wage requirements and the Federal Fair Labor Standards Act controls overtime wage payments. Specific exceptions exist with respect to minimum wage and overtime pay requirements for executives, professionals, outside sales people, agricultural workers and various others.

The Idaho minimum wage is \$5.15 per hour. It does not apply to an employee who works in an executive, administrative or professional capacity; anyone engaged in domestic service; outside salespeople; any child under 16 years of age working part time at jobs not exceeding 4 hours per day with any one employer or at odd jobs; seasonal employees of a nonprofit company program; and certain agricultural employees (those in the employer’s immediate family, those over 16 years of age who are employed in honest labor paid both presently and customarily on a price rate basis, commute to work daily and have worked less than 13 weeks of the preceding calendar year in agriculture, and those 16 years of age or younger who are paid both currently and customarily on a price rate basis, is employed on the same farm as his/her parent or person standing as loco parentis, and is paid at the same price rate as persons over 16 or is principally engaged in the range production of livestock). The federal minimum wage is currently \$5.15 per hour.

Idaho law requires every employer to notify its employees at the time of hiring of the rate of pay and usual pay period. Upon the employee’s request, this information must be provided in writing. With regard to any reduction in wages, the employer also is required to notify employees and do so in writing upon the employee’s request.

Upon separation of employment (layoff, resignation or discharge), the employer must pay all wages then due the employee by the earlier of the next regularly scheduled payday or within ten days of the layoff or termination. However, payment must be made within 48 hours if written request for earlier payment is made upon the employer (weekends and holidays are excluded).

Contact the Wage and Hour Division of the U.S. Department of Labor and/or the State of Idaho Department of Labor and Industrial Services (317 Main Street, Boise, Idaho 83735; (208) 332-3579), or call the regional representatives at Idaho Department of Labor offices located in the main Idaho cities if you have any questions. Idaho law prohibits retaliation against employees who exercise their rights under the wage and hour laws.

B. SPECIAL PROVISIONS FOR MINORS

You may work at most occupations once you are 16 years old. No one under 18, however, may be employed in any business or occupation determined by the U.S. Secretary of Labor to be hazardous or injurious to health. No child under 14 years of age shall be employed in connection with any mine, factory, workshop, mercantile establishment, store, telegraphy or telephone office, laundry, restaurant, hotel, apartment house or in the distribution or transmission of merchandise or messages.

No one under age 16 may work more than 40 hours a week nor more than 8 hours a day, during vacation time; nor more than 3 hours a day or 18 hours a week when school is in session; nor before 7:00 a.m. or after 7:00 p.m. (9 p.m. in summer). No child under 16 shall be employed during the hours in which the public schools are in session, except under school sponsored work experience and career exploration programs.

Except in occupations relating to mining or manufacturing, or occupations declared hazardous by the Secretary of Labor, a parent who is sole proprietor or a partner of a business may exercise parental rights by employing the child as the parent wishes, provided no violation of the Child Protection Act occurs. Under these conditions, there is no set minimum wage nor is there an age limit. When the business is incorporated, the parental right is no longer recognized and federal and state laws govern wages, hours and age of a working child.

C. DISCRIMINATION

Federal and state laws prohibit discrimination in employment based on race, color, sex, religion, national origin, disability, or age (40 or over). These laws have broad coverage. They require all employers who have at least five employees (and in special instances, some employing less than five) to hire, discipline, discharge, promote and pay their workers on a nondiscriminatory basis. Some common examples of illegal discriminatory acts are: paying women less than men to do the same work; refusing to hire women for certain jobs because of stereotyped ideas about “women’s work” and “men’s work”; denying training opportunities to women because “they probably won’t stay with the company, anyway” due to family obligations; refusing to hire or firing a person who is disabled, is considered to be disabled or has a history of a disability, because of the disability, real or perceived, failing to accommodate a person who is disabled if a reasonable accommodation can be made and would not be an undue hardship.

The important principle of nondiscrimination is that people should be considered on the basis of individual capacities and performance and not on the basis of characteristics generally believed to apply to a group. However, the law provides no protection for individuals claiming discrimination on the basis of sexual orientation in non-federal employment.

Idaho’s anti-discrimination laws are administered by the Idaho Human Rights Commission. If you have any questions or believe you have been subjected to illegal discrimination, contact the Commission at 1109 Main Street, Boise, Idaho, or call 334-2873. Collect calls will be accepted.

1. DISABILITIES

The Americans with Disabilities Act (ADA) of 1990 applies to employers, employment agencies, labor organizations or joint labor management committees. It requires equal

opportunity in the selection and hiring of qualified applicants with disabilities and requires equal treatment, promotions and benefits.

Employers may not make employment inquiries about an applicant's disability or conduct preemployment medical exams. They may ask if applicants can perform specific job functions if they are essential to the job and may condition a job offer on the results of a medical exam, but only if the exam is required for all entering employees in similar jobs.

The Act also requires reasonable accommodation for applicants and workers with disabilities when such accommodation would not impose an undue hardship. Reasonable accommodations may include making facilities more accessible, job restructuring, part time or modified work schedule, modifications to examinations or training, the provision of qualified trainers or interpreters and/or other similar accommodations. Reasonable accommodations do not include reassigning essential functions of the job to other employees.

For the accommodation to be an undue hardship, it must require significant difficulty or expense. Factors included to make these decisions could be the nature or cost of the accommodations, the resources and size of the business and the impact the accommodations would have on the facility. Individuals can file complaints with the Equal Employment Opportunity Commission within 300 days of a violation and in the Idaho Human Rights Commission within one year of a violation.

2. PREGNANCY

The law does not require an employer to give any special considerations to workers who are pregnant, although many Idaho employers do so voluntarily. If your pregnancy makes it difficult for you to perform a part of your job, let your doctor and your employer know. It may be that an accommodation can be made that will work well for both you and your employer.

The law does require that a pregnant worker be treated the same as other temporarily disabled workers. Health insurance benefits, disability leave, sick pay benefits and light duty assignments can be no more restrictive for pregnancy than for any other disability. A worker cannot be required to leave a job she is able to perform just because her pregnancy is beginning "to show." She cannot be required to return to work from disability leave at a preset time that applies only to pregnancies. In these matters, employers and employees should be guided by the individual's doctor's advice.

3. HARASSMENT

Discrimination laws prohibit any harassment of individuals based upon the person's protected status such as race, age, disability or gender. Because sexual harassment involves differing conduct, it is worthy of special mention.

Sex discrimination laws hold that a worker cannot be forced to submit to unwelcome sexual advances in order to get or keep their jobs. Employers must take steps to ensure the work environment is not offensive, hostile, or intimidating due to unwanted sexual conduct. On the other hand, employees are obligated to let their employers know when they believe sexual harassment is occurring. You should report the harassment per your employer's policy, if any, and at least try to exhaust your remedies at work before you quit employment should that become necessary. Failure to do so may render you ineligible for unemployment benefits and negate an otherwise valid claim.

4. RETALIATION

An employer cannot legally take action against you because you reasonably protested what may be a discriminatory act, participated in an investigation, filed a complaint or assisted another person in doing so.

D. AFFIRMATIVE ACTION

Many Idaho employers, especially those who receive federal contract money, have affirmative action plans. Although plans differ, they generally set goals for recruiting, hiring or promoting women and minorities into positions denied them in the past. Affirmative action plans do not require an employer to put an unqualified individual into a job just because of her/his sex or minority status.

E. EMPLOYMENT CONTRACTS

With the notable exceptions of civil service and union based employment, virtually all employment in Idaho is “at will.” This means that there is no set length for an employment relationship and either the employer or the employee may end it at any time without having to show “good cause” for doing so. There are some exceptions. For example, an employee should never be terminated for a discriminatory reason, in violation of an employer’s own rules or in violation of a public policy.

An employment relationship is based on a contract. This is an agreement between employer and employee, which may be “express” (in writing) or “implied” (from verbal promises). Examples of these contractual responsibilities include the following:

1. **Collective Bargaining Agreement** between the employer’s management unit and the employees’ collective bargaining unit. The specific remedies under these agreements often are governed by state statute and/or the National Labor Relations Act.
2. **Written Agreements** may exist between employer and employee (or independent contractor). These agreements may cover such items as pay, termination procedures and expected conduct. An agreement that a worker is an independent contractor is only one factor in considering whether a worker is really an employee.
3. **Employment Policies, Handbooks and Manuals** may create special contractual responsibilities for employer and employee, depending upon the language in these documents and their applicability to the circumstances at hand. Employees may generally rely on these manuals for guidelines as to termination and benefits.
4. **Oral Promises** may or may not be enforceable against the employer or employee.
5. **Idaho Law** provides for awarding attorney’s fees to whichever side wins a contract-based dispute . Unlike a discrimination case where fees may be awarded against an employee only if it is frivolous, in contract claims the loser always may be forced to pay fees for the winner’s cost and efforts.

F. CONSTITUTIONAL AND MISCELLANEOUS STATUTORY RIGHTS

Constitutional and statutory provisions may impose duties and obligations upon the employer or employee in certain circumstances. A few examples follow:

1. **Public Employees** often have special procedural rights that private employees do not have. For example, Idaho public school teachers have special rights in connection with the Idaho tenure statutes.
2. **The Right-to-Work Law** prohibits discrimination in connection with employment against individuals based on their affiliation or nonaffiliation with a labor organization. Express civil and criminal penalties are provided.
3. **Jury Duty or Subpoena Compliance** is a protected activity. Employers may not take retaliatory action against employees who obey subpoenas or attend jury duty.
4. **Polygraph** or lie detector tests are prohibited as a condition for employment or generally for continuation of employment. State and federal use of polygraphs is expressly excluded from this prohibition.
5. **State-Authorized Wage Garnishments for Child Support** are protected from employer discipline. A fine is imposed upon any employer who refuses to employ or takes disciplinary action against an employee as a result of a state garnishment (automatic payment taken out of paycheck) for child support.
6. **The Immigration Reform and Control Act of 1986** requires employers to verify that all new hires are legally authorized to work in this country. It requires that all workers have work authorization documents if they are not citizens. This means that you should be prepared to show any new employer certain documents such as a U.S. passport or a driver's license and an original Social Security card. You will also be asked to sign, under penalty of perjury, an employment eligibility verification (Form I-9).
7. **The Federal Rehabilitation Act of 1973** protects employees who work for federal contractors from discrimination based on disability. For more information about this law or to pursue a complaint of federal disability discrimination, contact the Office of Federal Contract Compliance Programs, U.S. Department of Labor, 1515 S.W. Fifth Avenue, Suite 1030, Portland, Oregon 97201, (503) 326-4112.
8. **COBRA** - Under federal law (Consolidated Omnibus Budget Reconciliation Act, referred to as COBRA) employers who employ twenty or more persons must offer continued health insurance coverage (including dental and vision plans) to employees upon termination. The continued coverage for a former employee and dependents must be for up to 18 months and at no more than 102% of the employer's cost. This provision applies so long as the employee was not terminated for gross misconduct.

Under COBRA, if an employee becomes divorced while continuing employment, the employer must offer the former spouse and any dependent

children a 36-month continuation of health insurance coverage. These provisions apply so long as the persons are not eligible for coverage under any other group plan. Anyone wishing to receive the continued insurance coverage must notify the employer of their intention to do so within 60 days of the triggering event (such as termination).

9. **The Family and Medical Leave Act**, (FMLA) requires employers with 50 or more workers to offer their employees 12 weeks of unpaid leave each year for the birth or adoption of a child; for the care of a seriously ill child, spouse or parent; or for the employee's own serious illness. Workers in companies with fewer than 50 employees, part time workers, workers with less than one year of employment (1,250 hours) and the highest paid 10% of employees are not covered under the Act.

Employers are required to maintain health insurance coverage for workers on FMLA leave. When the need for leave is predictable, a worker is required to give 30 days notice. Absent workers must be allowed to take the same job or an equivalent job on their return to work, providing they did not overstay their FMLA leave. If the employee decides not to return to work after the FMLA leave, then medical insurance costs could be recouped from the employee.

G. JOB SAFETY AND WORKER'S COMPENSATION

Working conditions must meet the safety and health requirements established under the federal Occupational Safety and Health Act. Any suspected violation first should be pointed out to your employer and if not corrected or resolved, should be reported to the United States Department of Labor, Occupational Safety and Health office. The area office is located in Boise with field offices in Pocatello, Lewiston and Coeur d'Alene. They are listed under United States Government in your phone book.

Generally, your employer must carry Workers' Compensation Insurance. If you are injured on the job you may be entitled to wage loss benefit payments while you are disabled, as well as medical expenses.

If you are injured on the job, notify your employer immediately. Your employer must give you a notice of injury form to complete. This may allow you to have your medical expenses paid by the employer. You must also tell your doctor that you are claiming an on-the-job injury and why. If you miss more than five days of work, you may be eligible to receive benefits for lost wages. If you are totally disabled, you should be compensated for your physical impairment as well as any loss of earning capacity.

You should not be terminated from your employment in retaliation for filing a worker's compensation claim. Such termination may be grounds for a wrongful termination claim, as your right to file a worker's compensation claim is protected. Employers should not refuse to hire workers who have previously received worker's compensation awards or have been disabled from an on-the-job injury because of either of those facts, so long as the worker is qualified for, and able to perform of the essential functions of the job in question.

Under the Americans with Disabilities Act, an employer may not discriminate against employees with disabilities. Employers must also make reasonable accommodations for employees with disabilities, absent undue hardship.

H. UNEMPLOYMENT BENEFITS

Unemployment benefits are available upon severance of the employment relationship, unless you are discharged for misconduct in connection with employment or voluntarily quit without good cause connected to the work. Unemployment benefits are only awarded to persons who have been involuntarily separated from their jobs. You must have earned at least \$1444.01 in three months of one year to be eligible for unemployment benefits.

A claim for unemployment benefits, titled a “separation statement,” must be filed with the State Department of Labor (DOL). During the time you are collecting benefits, you must certify to the DOE the attempts made to obtain new employment. Most employers in Idaho are subject to unemployment insurance taxes, but certain exemptions exist for some domestic and agricultural employers. Certain classes of workers also are exempt from Idaho’s employment security law (e.g., independent contractors, real estate brokers, etc.). Unemployment benefits are taxable income.

Under certain conditions, you may be forced to leave employment due to psychological or medical conditions that make you unable to work. This includes harassment that continues to the point where you are too emotionally upset to work. Even if you quit, unemployment benefits may be awarded if you can show that you were forced to quit for reasons beyond your control. Employees must, however, pursue “available options” prior to quitting if the separation is to be considered involuntary. This includes filing and voicing grievances.

I. TERMINATION

After termination, an employee’s rights are set mostly by statute. First, if there is no misconduct, unemployment benefits may be available. COBRA benefits relating to continued health care benefits are available, but usually at a substantially higher price than through the company.

Second, if there is an illegality or discrimination involved, rights may be vindicated through administrative agencies or the courts. However, the cost, time and travails of vindication, along with the defenses usually raised against claims, in comparison to what may be gained by an action against a former employer must be carefully weighed. An unsuccessful employee may be faced with paying for the employer’s successful defense against the claim, if the claim is frivolous.

Third, the employer may provide an internal grievance process, or the termination may appear to be a breach of contract. Where a contract claim is considered, the potential at-will defense should be evaluated. Employment at will is a contract concept: Each day of work gains the worker that day’s agreed pay and benefits. The contract can be terminated at any time, for a good reason, a bad reason or no reason at all, without liability. There are three basic exceptions to the absolute right of termination by either party: (1) a contract for a specific length of time; (2) a contract where the employer limits the reasons for termination and (3) the public policy exception. Few examples of (1) and (2) exist. In the public policy exception, the claims are from two separate sources: the court-created rights regarding and defining public policy and the state and federal legislatures’ statutes as are summarized above in Section F, “Constitutional and Miscellaneous Statutory Rights.”

If an employment contract existed and you were terminated in violation of that contract, you may have a claim for wrongful termination. Even if neither an express nor an implied

contract existed, you may under certain circumstances have a claim for wrongful termination. This area of the law in Idaho has been thoroughly explored in the past 15 years of case law from the Supreme Court. Successful claims have been brought in Idaho and other states when an employee was terminated for the following: (1) serving jury duty or exercising any other statutory right; (2) refusing to violate the law; (3) refusing to commit perjury or falsify data for the employer; (4) testifying against the employer; (5) combating discriminatory acts including sexual advances or discrimination; (6) refusing to submit to a polygraph examination; (7) opposition to employer's illegal or improper practice; (8) opposition to dangerous, unhealthy or unsafe working conditions; (9) exercise of first amendment rights of a public employee.

However, generalized claims of unfairness, discrimination (not based on a statutory violation), and/or poor treatment are uniformly rejected by the courts.

In considering an action related to the loss of a job, several considerations cannot be overlooked:

1. Employment litigation carries with it virtually all of the emotional anguish of domestic relations litigation, with two changes:
 - a. There are no children involved; and
 - b. The employer always has more money for the fight.
2. If the fight is over an employment contract:
 - a. The injured party has the obligation to lessen his losses and damages to the greatest extent possible;
 - b. There is no claim for the emotional distress associated with losing a job; and
 - c. If the fight is lost, the employee pays the employer's attorney fees and costs;
3. Another job is usually better, and more rewarding, than a lawsuit.

CHAPTER 4

FAMILY LAW

A. REQUISITES FOR MARRIAGE

If you are over the age of 18 and mentally capable of consenting to marriage, you may marry. If you are between the ages of 16 and 18, you must have the written consent of a parent or guardian and proof of your age before a marriage license will be issued to you. Minors under the age of 16 cannot marry except by written consent of a parent or guardian and by an order of the court. Married minors are considered emancipated and can handle their own business affairs, enter into contracts, sue and be sued and assume the other responsibilities of adulthood.

B. NAME

Idaho has no statute requiring the woman to assume her husband's name when she marries, although this is common practice. You may use any name you choose as long as it is not used for fraudulent purposes. Historically, the children of a marriage have been given the father's last name, but it is permissible to use the mother's name, a hyphenated last name or a totally different last name.

If you change your name upon marriage and later divorce, you can have your former name formally restored in the divorce decree or through a separate legal proceeding at a later time.

You may legally change your name without going through a court proceeding. Yet, because of difficulties sometimes encountered in getting others to accept a name different from the name on your birth certificate, marriage license, divorce decree or court order, you may wish to change your name through a court proceeding. Whatever name you use, it is best to use that name consistently.

C. RESIDENCE

The place of residence is the decision of both parties to marriage. In 1974, the Idaho legislature repealed the statute that designated the husband the head of the family, which had allowed him to choose the place of living.

D. ANTENUPTIAL AGREEMENTS - SOMETIMES REFERRED TO AS PRENUPTIAL AGREEMENTS

An ante nuptial agreement is a written agreement between a husband and wife which is entered into before they marry and usually states how the property is to be divided and how much maintenance, if any, is to be paid if the parties ever divorce. Antenuptial agreements are recognized in Idaho. If they are fair and entered into with both parties disclosing everything they need to without one party trying to coerce or defraud the other, antenuptial agreements can be a good way to take care of practical matters before the marriage.

It is important, however, that each party understands the agreement completely before signing it and that each has her or his own attorney. Examples of antenuptial agreements can be found in books available at a public library.

E. COMMON LAW MARRIAGE

Idaho used to be one of a small number of states, which did not require that a marriage be solemnized by a person authorized to perform marriage ceremonies. A marriage entered into without such solemnization is called a common law marriage. After January 1, 1996, new common law marriages are no longer recognized in Idaho. Common law marriages entered into before that date may still be recognized.

To have formed a common law marriage, before January 1, 1996, both parties must have consented to be married, held themselves out in the community as husband and wife and assumed marital rights, duties and obligations. No minimum time of living together was required or necessary to form a common law marriage.

The requisites for marriage discussed in Part A of this chapter, except for the requirement of a marriage license, apply to common law marriage. A common law marriage carries with it all the rights and responsibilities of a ceremonial marriage, including inheritance and community property rights.

F. MARRIAGES RECOGNIZED IN IDAHO

Idaho recognizes marriages entered into out of the state unless the marriage violates the public policy of the state. Public policy does not recognize same sex marriages or marriages entered into out-of-state or in a foreign country with the intent to get around the marriage laws of Idaho.

G. UNMARRIED PARENTS

1. LEGITIMACY

A man is presumed to be the father of a child if he was married to the child's mother either at the time of conception of the child or after the child was born. If the mother of the child or the "presumed father" believes that the "presumed father" is not the child's biological father, this presumption may be rebutted by clear and convincing evidence in a court of law. "Clear and convincing evidence" usually means that paternity tests on mother, child and the presumed father have proved that the man could not have fathered the child. When rebutted, presumption of legitimacy of a child born during wedlock is overcome by: (1) genetic tests which show that a husband is not the father of the child; or (2) an affidavit of nonpaternity signed by the natural mother and her husband and an affidavit signed by the natural mother and the natural father.

2. PATERNITY

If the mother of the child was not married at the time of the child's birth, the name of the child's father cannot be entered on the child's birth certificate without the written notarized consent of both the mother and the person to be named as the father. However, even if the mother and the person named as the father do sign the consent, paternity has not been legally established in Idaho in any of the following ways:

- a. Subsequent marriage of the parents - If the father of a child born out of wedlock marries the child's mother, the child is legitimized. If the child was born in Idaho, the parents can obtain a new birth certificate listing the

child's father on the certificate by filing an application for the new certificate, along with a copy of the marriage license, with the Bureau of Vital Statistics.

- b. Adoption by father of illegitimate child - If the father of a child born to an unmarried woman publicly acknowledges the child as his own and receives the child in his home and treats the child as if it were a legitimate child, the father has adopted the child and it is considered to be legitimate from the time of its birth. If the child's parents do not intend to marry each other, they may voluntarily obtain an Order of Filiation (Paternity) through the court to obtain a legal document formally establishing the child's paternity.
- c. Paternity action through the court - The parent of a child born out of wedlock who wants to establish the paternity of her/his child can do so either through a private attorney or through the local Department of Health and Welfare Office. The department can bring the action itself and the parent of the child is required to cooperate in the department's action as a condition of eligibility for benefits. The party bringing the action will file a complaint requesting that the court establish the child's paternity and set a support award. The complaint may also request reimbursement for birth expenses and child support provided to the child prior to the court's order. If the man admits paternity, the action can be completed very rapidly. If the man denies paternity, or is uncertain that he is the father, the court can order the mother, child and presumed father to submit to paternity testing. Paternity testing of mother, child and presumed father can range from \$225 up to 1,000. If paternity tests prove that the man could be the child's father, the court will usually order that he pay the costs of the paternity testing. If the paternity tests prove that the man could not be the child's father, the mother (or the State of Idaho) is usually ordered to pay the costs of the testing. Based upon the results of testing and other evidence, the father can be ordered to provide child support and medical insurance for the child until the child reaches 18, unless the child is continuing his/her education, then the father can be responsible to pay child support up to the age of 19. Once paternity is established, the father of the child can seek visitation rights or custody of the child.

A father may voluntarily acknowledge paternity, by jointly signing an acknowledgment of parentage with the mother and filing that document with the court. It is evidence of paternity. An acknowledgment signed after July 1, 1996 may be rescinded by any party to the acknowledgment the earlier of: a) six months, or less if federal law or regulation dictates, from the date of execution, or b) the date of a proceeding relating to the child, including a child support hearing.

In most cases, it is in the best interests of a child born out of wedlock to have paternity established. Some of the benefits of establishing paternity are:

1. The father can be ordered to provide child support and medical insurance for the child until the child reaches 19 or graduation from high school;

2. The child will be eligible for Social Security benefits, insurance and worker's compensation if the father becomes disabled or dies, whichever is sooner;
3. The child can inherit from the father's estate;
4. The child will be able to sue in case of the father's death due to negligence of a third party;
5. The child will have the opportunity to establish a relationship with the father;
6. If the mother becomes disabled, imprisoned, or dies, the father may provide care and support for the child;
7. The father can be ordered to pay for funeral expenses if the child dies;
8. The father may also be ordered to pay for birth expenses and expenses incurred for support of the child prior to the establishment of paternity;
9. Knowledge of the father's family medical history is often important to the child.

H. RIGHTS OF A PUTATIVE FATHER

An individual who claims to be the father of a child born out of wedlock may file a notice of his claim with the Idaho Bureau of Vital Statistics. The claim of paternity may be filed before the child is born and must be registered before any termination proceedings or placement of the child with an adoption agency.

If a notice of paternity has been filed the individual who filed his claim must be notified and given an opportunity to be heard before the child he claims to have fathered can be adopted.

Until the paternity of a child born out of wedlock has been legally established, the putative father has no other rights regarding the child. Once paternity is legally established the father is entitled to assume parental rights, duties and responsibilities as established by the court.

I. FAMILY FINANCIAL RESPONSIBILITY

In Idaho, a husband and wife have a mutual obligation of financial support. This means that each spouse is responsible for providing the necessities of life for the other. Necessities of life include food and lodging. Parents also have a legal duty to financially support their natural and adopted children who are under the age of 18. This responsibility attaches to both parents. If parents are divorced, each parent continues to have a legal duty to provide support for any children.

J. CHILD PROTECTION ACTIONS

The Child Protective Act (CPA) is a body of law which addresses child abuse, abandonment and neglect. Each child that comes under this act shall receive the care, guidance and control that will promote that child's welfare and the best interest of the State of Idaho.

The CPA seeks to join the efforts of state and local public agencies and private organizations to serve the family unit and to take such action as may be necessary to prevent the abuse, neglect or abandonment of children. These efforts also include the development of interagency multi-disciplinary teams by January 1997 for investigation of abuse and neglect referrals within each county.

Under the CPA, police officers who believe that a child is in imminent danger have the right to take custody of that child. The family of that child has a right to a hearing within 48 hours (shelter care hearing) where the court will decide, after being presented with evidence, the best placement of the child pending an adjudicatory hearing. An adjudicatory hearing is a court proceeding where all parties present their evidence and then the court decides who will have legal and physical custody of the child.

Several options are available in the resolution of an action under the CPA. An authorized agency, most often the Department of Health and Welfare, may obtain legal custody of the child. Legal custody means the Department of Health and Welfare has responsibility of the child. The child may be placed with her/his parents under certain conditions or may be placed in foster care for a time. Or, an agreement may be reached whereby the family will attend counseling or parenting classes in exchange for having the child returned to the home with Health and Welfare monitoring the child's care.

Under the CPA, both parents have the right to an attorney. If the case is complex, if an attorney is necessary to protect the parents' interests and if those interests are not adequately represented by another party, the court may appoint an attorney for a parent. A guardian ad litem is automatically appointed for any child involved in this act. Additionally, an attorney may be appointed for the guardian ad litem. The guardian ad litem's role is to represent to the court the best interests of the child.

Please also see Chapter 10 Section C, #2: Reporting of Child Abuse, Abandonment or Neglect.

K. TERMINATION OF PARENTAL RIGHTS

Parental rights can only be terminated under certain conditions. These conditions are as follows:

1. A parent has abandoned, neglected or abused her/his child. Sometimes, under these circumstances the Department of Health and Welfare will obtain legal custody of the child under the Child Protective Act (See Section I). If attempts at reuniting the family are unsuccessful then termination of parental rights may be pursued.
2. The parent is unable to discharge parental responsibilities because of mental illness and there are reasonable grounds to believe the condition will continue for a prolonged indeterminate period and will be injurious to the health, morals or well being of the child.
3. Termination is found to be in the best interests of the parent and child and a petition for termination has been filed by the parent, attorney for parent, authorized agency or an interested party.
4. A consent to termination witnessed by a judge and a petition for adoption by the persons seeking to adopt are filed with the court.

5. A parent's criminal act has caused the conception of the child, or the surviving parent has killed the other parent or the parent is in prison without possibility of parole.

After one of these conditions has been met and the proper paperwork filed with the court, a hearing will be set. The court will hear the matter without a jury. If after the hearing the court terminates parental rights, then the parents have no legal rights over that child.

L. ADOPTIONS

Adoption is a two-part process. The written consent, witnessed by a district judge or magistrate judge, of natural parents of the child to be adopted must be obtained. If one or both parents do not consent in a writing, witnessed by a judge, a court proceeding for termination of parental rights is required. Although this is a two-part process, the petition for termination of parental rights and the petition for adoption may be jointly filed. Similarly, the hearings on both petitions may be conducted on the same day. If a parent cannot afford an attorney and wants one, the court will appoint an attorney before a hearing to terminate parental rights.

The adoption petition contains information about the person being adopted and the individual(s) requesting the adoption. Unless a stepparent is requesting the adoption of a stepchild, a home study must be completed by Health and Welfare or a licensed children's adoption agency and provided to the judge for review. The cost of the home study varies and must usually be paid in advance.

Adoption hearings are closed, which means that only the judge, the judge's clerk and the people directly involved may attend the hearing. After considering the evidence presented and determining that the adoption is appropriate, the court will have the adopting parent(s) sign an adoption agreement accepting the parental responsibilities for the child. The judge then issues an order of adoption. Because there is no waiting period in Idaho, the adoption is filed when the judge signs the adoption order. The court then "seals" the file, which means the file can be opened only by court order.

After the court signs the order of adoption, a certificate of adoption is completed and a new birth certificate is issued for the child. Procedures may differ for an out-of-state adoption and an attorney should be consulted.

In 1996, the Idaho Legislature added a section governing international adoption of children. When a child has entered the United States in order to be adopted that may be accomplished by filing an adoption petition. Further, if the child has already been adopted under a foreign country's adoption procedures, that adoption can be recognized here by the filing of an adoption petition. The adopting parents must file a petition, which will contain information about the parents and the child. The adopting parents must certify that the child has a visa or other document allowing him or her to enter the U.S., and that a home study of the adopting parents has been conducted. That home study is attached to the adoption petition. The adopting parents must also state that under their belief, the child's biological parents are residents of a foreign country, and that the adoption is in the child's best interests.

At the hearing for the international adoption, the judge will determine whether the adoption is in the best interests of the child, and if it is, the judge will enter an adoption decree. After that time, the child is treated as the parent's own lawful child.

If the child has entered the country by permission of the State Department or I.N.S., for the purpose of being adopted in this country, the permission of the biological parents is not needed for the adoption.

M. JUVENILES

The Juvenile Corrections Act, passed by the Idaho Legislature in 1995, covers the treatment of juveniles who have committed a crime and establishes the Idaho Department of Juvenile Corrections. The juvenile corrections system is based on the principles of accountability, community protection and competency development. Parents of other legal guardians of juvenile offenders must also participate through counseling or treatment to promote positive parenting skills and an understanding of the family's role in the juvenile's behavior. Parents or legal guardians are also held accountable, where appropriate, through payment of detention costs and restitution to victims of the juvenile's delinquent acts. A juvenile is anyone under the age of 18.

1. JUVENILE OFFENDERS

a. STATUS OFFENDERS

Status offenses include runaway, curfew violations and trancies. These are acts which if committed by an adult would not constitute a crime. Detention is not available for punishment of status offenses unless three status offenses have been committed within a 12-month period. Detention often is used for habitual runaways to insure the juvenile's presence at pending juvenile court proceedings.

b. ADULT CRIMES

Any juvenile who commits rape, murder, attempted murder, 1st degree arson, robbery, mayhem, forcible sexual penetration by use of a foreign object, or forcible infamous crimes against nature, or assault or battery with intent to commit any of these crimes, is automatically treated by the court system as an adult. The juvenile offender is housed in the county jail and stands trial by jury. Once a juvenile offender goes to adult court she/he will thereafter be dealt with in the criminal court system as an adult.

c. MISDEMEANOR AND FELONY OFFENSES

A juvenile who either pleads guilty to, or is found guilty beyond a reasonable doubt of committing a crime that would be either a misdemeanor or a felony if committed by an adult, will be sentenced to a maximum 90-day detention term if found guilty of a misdemeanor or a 180-day detention term if found guilty of a felony.

Some or all of the detention time can be suspended and the juvenile offender placed on probation for a term of 3 years or less. If the case is very serious, the juvenile offender can be committed to the custody of the Department of Juvenile Corrections for an indeterminate time up to the juvenile offender's 19th birthday.

The presiding judge has a great deal of latitude in the sentencing of juvenile offenders. After reviewing a report submitted by the county probation office, parents' recommendations and any other appropriate information, the judge can structure a probation to assure that the community is protected and that the juvenile is held accountable and given the opportunity to

develop needed skills to succeed without further law violations. The terms of probation often include community service, classes, counseling, and apology to the victim and restitution.

d. CONSTITUTIONAL RIGHTS

Juvenile proceedings are less formal than adult proceedings. A juvenile has the same basic constitutional rights as an adult charged with a crime, including the right to remain silent, to be represented by an attorney and to have one appointed if she/he cannot afford one, to testify on her/his own behalf and to cross-examine witnesses.

2. PARENTAL RESPONSIBILITY

Parents can be required to participate in counseling, restitution or skill-building classes. They are also responsible for the cost of the care and treatment of juvenile offenders. Restitution for damages to victims can be in any amount determined by the court, and parents as well as the juvenile, can be ordered to pay restitution. In 1996 the Legislature passed the "Parent Responsibility Act," authorizing cities and counties to enact and enforce ordinances that define and set penalties for failure to supervise a child.

3. EMANCIPATION OF MINORS

Idaho does not provide for the emancipation of minors, except through marriage. Some states do authorize a court procedure which results in a minor child being totally responsible for her/himself legally and relieving parent(s) of legal responsibility. Because the laws of the State of Idaho do not recognize emancipation of minors, parents are legally responsible for their unmarried minor children.

CHAPTER 5

FINANCIAL MANAGEMENT

A. BANKING AND CREDIT

To establish financial identity, you may wish to open checking and savings accounts. If you are married and you open an individual account, it should be opened under your name, i.e., “Mary Jones,” not “Mrs. John Jones.” Joint accounts should be listed as “Mary or John Jones.” While opening bank accounts does not establish a credit history, having such accounts can serve as the basis for establishing a credit history and be of assistance in getting credit approval.

Credit cards may be obtained either individually or jointly so long as the applicants have sufficient income, good payment records and debts not out of proportion to their assets and income. As with bank accounts, a credit account should be opened under the credit holder’s full name.

It is important for you to develop your own credit history, whether married or single. A young person may wish to establish a credit history by opening a checking and/or savings account and obtaining a small loan. A co-signer may be required until an adequate history is established. As loans are paid, a credit history is established. After credit is established, you may be required to obtain the co-signature of your spouse, but only if such requirement is not sex discriminatory.

The Equal Credit Opportunity Act of 1974 prohibits creditors from considering married people more credit-worthy than unmarried, widowed or separated people. Likewise, creditors are prohibited from terminating credit because of a change in marital status. Although creditors may consider alimony and child support payments as income, you have the option to not reveal alimony and child support as part of your income. Creditors may request information concerning employment, career and business plans, but are prohibited from requesting information concerning birth control practices and intentions concerning having children.

A credit bureau is a privately owned business which keeps credit history on individuals. Those with whom you have credit supply the credit bureau with information indicating how regularly and promptly you pay your bills. Credit bureaus also keep track of matters of public record, such as divorces, bankruptcies and lawsuit settlements. Accounts you share with your spouse or for which you are both liable by contract must be reported in both names so that both spouses have individual credit files. Thus, if you are married you will maintain your own credit history which will continue even in the case of divorce or death of a spouse.

In general, credit information on you may be furnished by credit bureaus only under the following conditions: (1) in response to a credit order; (2) upon your written request; (3) in connection with the extension or maintenance of your credit; (4) in connection with your business transactions, insurance, license eligibility, employment or government benefits.

The Fair Credit Reporting Act is a federal law protecting your right to privacy and to an accurate credit standing. It contains specific procedures for reviewing and disputing your credit report. You may find a copy of the law at your county law library or the Idaho State Law Library in Boise.

There are three credit reporting systems, Equifax, Experian and Trans Union. Each of these systems is electronically automated and operates on a national basis. Inquiries for personal credit report information can be made via a toll-free number. If you are denied credit based on information contained in your credit report, the fact must be disclosed to you by the credit grantor in written form, and you are then entitled to a copy of that report without cost. In all other instances, a fee will be required for a copy of your report.

If you find there is an error in your file, you have the right to contest it. If you provide a written explanation or justification for an entry, or prove error, the bureau must inform those creditors who have received a report on you within the last six months of the corrected or additional information. Except for bankruptcy information, there should be nothing in your credit files older than seven years.

B. BANKRUPTCY

The United States Bankruptcy Code affords relief to persons and/or business entities whose debts exceed their assets, or those who have an inability to keep current on obligations owed at a given time. Several forms of relief exist: (1) Chapter 7, liquidation available to individuals and/or businesses; (2) Chapter 13, “wage earner” plans available for reorganization of debts by certain individuals and small businesses; (3) Chapter 11, reorganization available to businesses; (4) Chapter 12, reorganization available to family farmers.

1. CHAPTER 7: LIQUIDATION

Filing a Chapter 7 liquidation bankruptcy petition triggers the appointment of a trustee whose duty is to collect all nonexempt assets of the debtor, which are then sold to create a fund from which all unsecured creditors with allowed claims are paid on a pro rated basis. Typically, secured creditors (i.e., those with mortgages, deeds of trust, car titles or other such forms of security) are able to eventually repossess the collateral held as security for those debts. Debtors may be able to make new arrangements with the creditor by agreeing to continue making payments for such assets as they are able. Most debts are “discharged” (that is, they may no longer be collected from the debtors) by operation of bankruptcy law except those incurred by fraud, certain tax obligations, student loans, “D.U.I.” judgments, or obligations for alimony and/or child support.

2. CHAPTER 13: WAGE EARNER PLANS

Generally, individuals with regular income (or small, family businesses not operated under a partnership or corporation) can seek relief from debts through Chapter 13 wage earner plans. This mechanism provides debtors an opportunity to reduce the amount of monthly payments currently owed and stretch them out over a period of time specified in the plan, generally three to five years. In some instances, the amounts of secured obligations, or the interest rates charged on those debts, can be reduced. A trustee is appointed to collect a monthly payment from the wage earner plan debtors, which the trustee then distributes first to secured creditors and priority (tax) creditors and then to unsecured creditors on a pro rated basis. The amount which must be paid to the trustee is based upon a budget formulated by the debtors which establishes their monthly “disposable income.” The plan must also be approved by the Bankruptcy Court.

3. CHAPTER 11: BUSINESS REORGANIZATION

Larger businesses, including partnerships and corporations, can seek relief from debts through reorganization plans available under Chapter 11 of the Bankruptcy Code, which are somewhat similar to Chapter 13 wage earner plans. A key distinction, however, is that a trustee is not usually appointed in a Chapter 11 case. The day-to-day management of a Chapter 11 business continues as it did at the time of filing, but the business assumes all of the fiduciary obligations of a trustee in its conduct of the business and must report to the Bankruptcy Court and to creditors as would a trustee.

Chapter 11 relief allows businesses an opportunity to reorganize or restructure business operations as well as to modify payments on their debts. Contracts can be rejected or modified. Payment terms, including interest rates, can be changed or extended. And the business can even be partially liquidated. The debtor's plan must be submitted to and approved by the Bankruptcy Court and creditors. If a plan of reorganization is not approved, or does not appear viable after approval, the debtor, or in some cases a creditor, can ask the court to convert to another type of proceeding (i.e., a Chapter 11 to a Chapter 7).

4. CHAPTER 12: FARM REORGANIZATION

Chapter 12 of the Bankruptcy Code became effective in November 1986. Chapter 12 affords family farm operations an opportunity to adjust debts and budget income and payment obligations over a plan period that can last several years. It requires a plan to be proposed and approved by the court within about 135 days from filing.

5. BANKRUPTCY EFFECTS

One effect of filing a petition for bankruptcy relief under any of these chapters is that any and all acts by creditors to attempt to collect on debts are automatically “stayed” or prohibited. Thus, collection litigation, phone calls, letters, foreclosures and all other forms of collection attempts must cease once the bankruptcy petition is filed and until such time as a creditor gains the approval of the Bankruptcy Court to reinstitute collection proceedings, repossess assets or otherwise proceed with respect to a given debt.

The effect of both partnership and community property laws in Idaho upon the rights and obligations of partners or of married persons, whether living together or separated, can be very complicated. Individual circumstances require the analysis and advice of an expert if relief under the Bankruptcy Code is being considered.

a. Collecting Court Judgments

A creditor collects court judgments by requesting the court clerk to issue a “Writ of Execution” ordering the sheriff to seize the money, goods, or real estate of a judgment debtor. In very limited types of cases, money or property may be attached before a court enters a judgment. In most cases the seizure takes place after a judgment has been entered following a trial or hearing. The writ of execution permits the sheriff to levy on personal property or to garnish wages, bank accounts, or debts.

A writ of execution can only be issued within five (5) years after the entry of the judgment. In judgments for money, the creditor may renew the judgment by motion before the judgment expires.

b. Garnishment of Wages

A creditor can have the sheriff serve a “Notice of Garnishment” on the employer of a judgment debtor. The employer is then required to pay the wages to the sheriff to satisfy the money judgment. Part of the wages are exempt from execution and garnishment under state and federal law. An employer may not discharge an employee for being garnished.

A creditor may only garnish that part of the wages that is over thirty (30) times the federal minimum wage or 25% of disposable income. Whichever exemption lets the debtor retain more wages applies. Disposable income is your net pay after the withholdings required by law, such as taxes, are taken out.

Under the Idaho Credit Code, there is a higher wage exemption for sales or loans incurred for consumer purposes when credit is granted pursuant to the seller’s credit card or by a seller who regularly engages in a credit transaction of the same kind and a debt is payable in installments or a finance charge is made.

c. Homestead Exemptions

A homestead exemption prevents the forced sale of a house or mobile home for debts when a creditor has obtained a judgment against the owner. A Homestead consists of the principal house or the mobile home in which the owner resides or intends to reside, including other related structures and the land surrounding it. Unimproved land also qualifies if the owner intends to build a home or place a mobile home on it with the intent to reside there. A mobile home is protected whether or not permanently affixed to the land or whether the land is owned by the mobile home owner. The homestead exemption protects the net value of the house or mobile home, including the land, after all liens or mortgages have been subtracted from the market value up to \$50,000 as of July 1, 1992.

The laws regarding homestead exemptions have been changed so that in most cases a homestead is automatically protected without the filing of a written Homestead Declaration. However, there are certain exceptions to the automatic coverage for a homestead. If unimproved or improved land is not yet occupied or a mobile home not yet occupied by the owner and located on a lot not owned by a mobile home owner, a Declaration of Homestead must be filed.

d. Property and Government Benefits Exempt From Levy

There are restrictions on what personal property the sheriff can take to satisfy a judgment. Generally, a car, furniture, personal property, and tools of trade are fully or partly exempt from execution. Government benefits such as Social Security Disability and Retirement, SSI, Veterans, Railroad Retirement, and AFDC benefits are completely exempt from garnishment. It is a good practice to keep all funds from government benefits and other exempt benefits in completely separate bank accounts so there can be no dispute as to their origin. Some exemptions may be lost if they are commingled or mixed with nonexempt funds.

At the time of the execution or garnishment the sheriff or bank garnishee will serve or mail you a copy of the writ of execution and notice of garnishment, notice that the property or money has been seized, a notice of exemptions available under federal and state law, instructions for asserting a claim of exemption, and a form for making a claim of exemption. Spanish translations of the notice and instructions can be obtained from the sheriff.

If the sheriff levies upon personal property or garnishes a bank account the debtor should deliver to the sheriff's office a written claim of exemption declaring the property or money to be exempt from execution and garnishment. This should be done within fourteen (14) days after the mailing or personal delivery of the notice that property or money has been taken by the sheriff. However, a claim of exemption should be filed whenever the seized money or property is considered exempt even after the fourteen (14) day period has passed.

If, for any reason, you do not make a claim of exemption within fourteen (14) days after the date of service or mailing, the sheriff will release the property to the creditor. If you then want to recover the property or money because it is exempt, you will have to go back to the court and seek an order quashing the levy or file an independent action for wrongful attachment.

After a claim of exemption has been filed with the sheriff, the sheriff has one (1) business day to deliver or mail a copy of the claim of exemption to the creditor. The creditor has five (5) business days to file a motion with the court stating why the exemption is being contested. The court will schedule a hearing within five (5) to twelve (12) days to determine the validity of the exemption. The debtor will receive a copy of the motion and notice of the date and time of the hearing. The debtor will have to attend the hearing and present evidence or testimony showing the property or money is exempt.

If the creditor notifies the sheriff the claim will be uncontested or fails to file a motion within five (5) days the sheriff will return the property or money. The debtor should not be responsible for any costs of collection if the claim of exemption is not contested or found to be valid. However, if the debtor claims an exemption or the creditor files a motion contesting the claim of exemption without a reasonable basis or frivolously, then the court may award costs, including attorney's fees if provided by statute or under a contract, to the prevailing party. You should seek legal advice immediately if your creditor challenges the claim of exemption.

There are many different kinds of exemptions under both federal and state law. Some exemptions have limitations and can be lost or unavailable in certain circumstances. There are specific exceptions to the exemption for enforcement of child support orders.

The above is very general and subject to change. There might be special factors in your case, or you might have questions. We urge you to consult an attorney as soon as possible if an execution or garnishment takes place, especially if exempt government benefits such as Social Security, SSI, Veterans, AFDC, or Railroad Retirement have been seized from your bank account.

C. INSURANCE

In Idaho, insurance is regulated by the Idaho Department of Insurance. Consumer Affairs Officers at the Department are available to provide assistance with insurance related complaints and questions. The Department's local phone number is (208) 334-4250, and its toll free number is (800) 721-3272. Insurance information and information about the Department is also available at the Department's web site: www.doi.state.id.us.

1. LIFE INSURANCE

When reviewing life insurance needs, you should consider that replacing an individual's services, both inside and outside the household, could be very costly for survivors. For a spouse who does not work outside the home, consideration must be given to the services he or she provides and the realistic cost of replacing those services. Sending children to college or supporting elderly parents often depends upon the income of two wage earners. When purchasing life insurance, be sure to carefully assess your individual family's needs and expectations for the future. Also, be sure you understand the ownership, benefits, rights and obligations of the policy. If an agent suggests canceling or replacing a life insurance policy, you should carefully check to determine what charges or penalties may apply and also whether there will be any income tax consequences.

2. MEDICAL, SURGICAL AND HOSPITAL INSURANCE

Everyone should carry medical, surgical and hospitalization insurance that will provide coverage for necessary medical treatments. When selecting an individual medical plan, a woman of childbearing age may have to request maternity insurance, but need not be married to qualify.

Idaho has specific laws to assist small employers and individuals in gaining access to health insurance plans. The Small Employer Health Insurance Availability Act applies to health plans offered to employers with 2-50 employees. The Individual Health Insurance Availability Act applies to individual health plans. The purpose and intent of these laws is to promote the availability of health insurance plans to small employers and individuals regardless of their health status or claims experience. These laws establish some rating restrictions, limit exclusions that can be imposed for preexisting conditions (i.e., medical conditions you may have at the time you purchase the insurance), and contain provisions for guaranteed renewability of health plans and "portability." Portability refers to the ability to switch to a new health plan without having to undergo new waiting periods for a preexisting condition; for example, when a person changes employers.

For persons who are seeking to purchase individual health insurance coverage, Idaho law requires that individual carriers actively offer certain types of health insurance plans to all applicants regardless of the person's health condition. These plans are known as the individual basic health benefit plan, the individual standard health benefit plan, and the individual Catastrophic A and Catastrophic B health benefit plans. Each of these plans offers a different level of coverage at a different rate and is available to persons who would normally not qualify for any of the carrier's other plans due to past or current health problems.

In addition to state law protections regarding health insurance, a federal law known as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) created new minimum portability and enrollment protections for consumers. This law provides important protections for persons who change jobs or become unemployed and want to switch from their old employer plan to another plan. In addition, HIPAA prohibits group health plans from treating pregnancy as a preexisting condition. There are several other important federal laws that impose requirements on health insurance plans. The Mental Health Parity Act prohibits large employer health plans from imposing annual and lifetime dollar limits for mental health benefits that are more restrictive than limits for medical and surgical benefits. The Newborns' and Mothers' Health Protection Act provides that small employer and large employer health plans cannot restrict benefits for a hospital stay in connection with childbirth to less than 48

hours following a vaginal delivery, or 96 hours following a delivery by cesarean section. The Women's Health and Cancer Rights Act requires health plans that provide mastectomy coverage to also provide coverage for reconstructive surgery.

Traditional health insurance allows the insured to see the health services provider of his or her choice and reimburses the insured for a portion of the costs of covered treatments. Managed care plans differ from traditional insurance in that they create incentives for members to obtain treatment from health care providers that are part of a "network." The network providers are either employees of or under contract to the company offering the managed care plans. The managed care plan pays the network provider directly for any services provided a member, except that the member is generally responsible for a small "co-payment" amount. If you are considering a managed care plan, it is very important to make certain you are comfortable obtaining treatment from the health services providers that are part of the plan's network of providers. It can be very expensive if you elect to obtain treatment from a health provider who is not a member of the network of your managed care plan.

3. DISABILITY INSURANCE

Disability insurance pays a percentage of the salary or wages lost due to an accident or illness that leaves a person temporarily or permanently unable to work. Disability insurance policies vary a great deal as to duration and amount of benefits and must be reviewed carefully. When considering disability insurance, it is important to consider whether the insurance benefits offered under the policy will supplement or be offset by any Social Security disability income.

4. AUTOMOBILE INSURANCE

It is very important that drivers carry sufficient automobile insurance coverage. Idaho law requires all drivers to have, at a minimum, automobile liability insurance and you must keep your certificate of liability insurance in your car at all times. Liability insurance pays for bodily injury or death to others, or for damage to the property of others caused by your negligence. You should assess your potential liability in determining the limits you select. Do not automatically settle for the mandated minimum limits.

In addition to liability coverage, you should carefully consider the following types of coverage when purchasing auto insurance: uninsured/underinsured coverage, which provides coverage for injuries caused you by uninsured or underinsured motorists; medical payments coverage, which pays limited medical and funeral expenses if you, a family member, or a passenger in your car is injured or killed in a car accident; collision coverage, which pays for damage to your car caused in an accident; comprehensive coverage, which pays for damage or loss to your car due to causes other than an accident; towing and labor coverage that reimburses for towing charges; and rental reimbursements coverage that pays a daily amount for a rental car if your car is being repaired due to damage covered by your policy.

When purchasing auto insurance coverage, it often pays to shop around. It is also important to purchase coverage that fits your needs. For example, if your car is an older model and fully paid for, it may make sense to drop collision and comprehensive coverage. If you belong to an automobile club, you may already have towing and labor coverage.

5. HOMEOWNER'S INSURANCE

In addition to the coverage on your home and personal property, homeowner's insurance provides important insurance protection known as comprehensive personal liability coverage (CPL). CPL coverage protects you against claims from non-auto accidents or property damage to others caused by you, your children, or pets. It is broad coverage which might include such things as hunting accidents, children's fights with injury to others, dog bites, etc. Coverage available under homeowner's policies for your home and personal property can vary considerably and it is important to purchase coverage that fits your needs. Be certain to adequately insure for the value of your dwelling, but the insurance on your home should not exceed its replacement cost. It also pays to ask your agent about discounts for things like burglar alarms, fireproofing, and storm proofing. High value items, such as jewelry and antiques, may need to be specially scheduled to achieve adequate coverage. You also may want to ask your agent about how many and what types of claims can be filed before a company will refuse to renew a policy.

D. SOCIAL SECURITY

Social Security is a federal "social" insurance program administered by the Social Security Administration. In order to be eligible for Social Security you must have worked and paid into Social Security and have earned enough quarters of coverage to be insured. You may find out if you are insured for benefits by filing a "Request for Earnings and Benefit Estimate Statement" SSA-7004. You can receive this form by calling 1-800-772-1213. Anyone who works and has paid in enough money to the Social Security fund over enough quarters will have an insured status. You and your family would then be eligible for benefits upon disability, retirement or death. You may also be eligible for benefits through a spouse's employment.

If you are insured you and your family may be eligible for benefits in the event of your retirement, or if you become disabled. If you die, your family might be eligible for survivors' benefits.

Retirement benefits in a reduced amount can begin at age 62. If you wait until full retirement age there is no reduction in your benefit. If you were born before 1938, your full retirement age is 65. For people born in 1960 or later, the full retirement age will increase gradually to 67.

If you become disabled you may be eligible for disability benefits. In order to receive disability benefits you must have a physical or mental condition which prevents you from being able to work and earn \$500 a month. Your condition must also be expected to last 12 months or end in death. You must also have recent work under Social Security in order to be eligible. The disability decision is based on your medical condition as well as your educational and vocational background.

Supplemental Security Income (SSI) is another program administered by the Social Security Administration. SSI does not require that a person have worked and paid into Social Security. It is for people age 65 or older, blind or disabled. SSI can provide a monthly benefit; it can also supplement a low Social Security benefit. If you are eligible for SSI, you are automatically eligible for Medicaid. However, a separate application for Medicaid must be filed with the local Health and Welfare office.

If you are the spouse of a disabled or retired worker or a widow and you have children under age 16, you may be due benefits. You may also be due benefits beyond your child's 16th birthday if the child is disabled and you must provide extensive care for that child.

Benefits are also paid to the spouse or divorced spouse of a retired or disabled worker. In order to receive spouse or divorced spouse benefits, you and the worker must be age 62 or older. If you are divorced, your marriage must have lasted at least 10 years and you must currently be unmarried.

Survivor benefits are also payable to a widow and a "divorced widow." In order to receive widow or "divorced widow" benefits you must be age 60 or older. To draw as a widow you must be unmarried or have been remarried after age 60. If you were divorced, your marriage must have lasted at least 10 years and you must currently be unmarried.

For more information regarding Social Security benefits, call 1-800-772-1213.

E. QUALIFIED RETIREMENT PLANS

Retirement plans, which can be either "qualified," (meaning certain requirements have been met which "qualify" the plan for tax benefits) or "nonqualified," are essentially plans, based on employment, for the systematic accumulation of funds to be used for retirement.

Qualified plans, which are further broadly categorized as "defined contribution" plans or "defined benefit" plans, are getting more and more complicated as Congress passes more rules aimed primarily at preventing discrimination between the owners or higher paid employees and the lower paid employees. The major benefits of a qualified plan include the ability to take an income tax deduction for the current contributions to the plan and deferral of the earnings accruing on the assets in the plan. Depending on the nature and design of the plan, you may defer a part of your salary into the plan, or you can make contributions on an after-tax basis. Companies may elect to match all or a part of your contribution. There is no law which mandates that a company provide a retirement plan (other than the contribution into the Social Security System, of course).

The major disadvantage to a qualified plan is that if funds are withdrawn prior to the age of 59 1/2, a penalty is assessed on the amount of money withdrawn. Income tax must be paid on the amounts withdrawn at any age (to the extent not previously taxed), although taxes paid after retirement are frequently calculated at a lower rate. Distributions must begin no later than April 15 of the calendar year following the year in which you attain age 70½ and can be taken either in lump sums or annuitized over your life expectancy. Distributions also can be paid out by way of an annuity payable at an established rate over your life expectancy. Equal periodic payments made over a life expectancy can be started at any age and without the 10% penalty (although any applicable income tax will still be payable). Specific rules apply with regard to distributions to surviving spouses or other beneficiaries in estate settlements. Consult the Internal Revenue Service Publication #575 and an attorney for more information.

The deductibility of contributions to an Individual Retirement Account (IRA) is limited, depending on the taxpayer's income level and participation in a qualified pension plan. For 2002 through 2004, the contribution limit is \$3,000. For 2005 through 2007, it will be \$4,000. In 2008, it will be \$5,000. Starting in 2009, the maximum contribution is subject to an annual inflation adjustment. For 2002 through 2005 individuals who are at least age 50 will be able to make an additional catch-up contribution to their IRAs of up to \$500. After 2005, the

maximum catch-up amount will be \$1,000. However, earnings can still be deferred on contributions made in amounts of up to 100% of earned income or \$2,000, whichever is less (\$2,250 for a “spousal IRA”).

Even if you are in a qualified pension plan, the IRA contribution may be fully or partially deductible. For 2002, the deductible amount of the contribution will decrease for single individuals with \$34,000 in income and will phase out at \$44,000 in income. For subsequent years, the income limits will gradually increase. For 2005 and thereafter the maximum range will be from \$50,000 to \$60,000.

For a married couple filing joint who are both covered by an employer’s qualified retirement plan, the IRA contribution deduction will reduce in 2002 when income is between \$54,000 and \$64,000. The income limits will gradually increase until 2007 and thereafter, when the maximum range will be from \$80,000 and \$100,000.

F. FINANCIAL ASSISTANCE

1. TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO

Families with children whose lives have been disrupted by the death, disability or unemployment of one or both of the parents may be eligible for monthly money payments from Temporary Assistance for Families in Idaho (TAFI), a financial assistance program through the Department of Health and Welfare. To qualify, a child must be under 18, living with a relative, residing in Idaho and show need. The income and assets of the family must be less than the maximum amounts allowed. The family member with whom the child lives may be included for a money payment. A pregnant woman with no other children may qualify before her child’s birth.

Apply for benefits at your local Department of Health and Welfare office. Your application will be reviewed by a self-reliance specialist who will interview you. A qualifying family receives a payment at the beginning of each month. The amount received depends upon family size and other income.

A family receiving TAFI has certain responsibilities. Changes of address, household composition, marital status, income, resources, vehicles, school attendance, citizenship status, disability or child care costs must be reported within ten days of the family knowing about the change. You must complete a Personal Responsibility Contract (PRC), and cooperate with the department in establishing paternity of your children. You must also register for work, assign any child support rights to the state, apply for any other benefits you may be entitled to and furnish the Department with all necessary documents and information.

There are many reasons a family may need assistance. If you feel you may qualify, contact the Department of Health and Welfare regional office nearest you.

2. COUNTY ASSISTANCE

If you cannot afford hospital and medical care or basic necessities such as rent, food and utilities, the county is required by law to assist you in paying for them. County assistance is a “last resort” program. This means that the county will pay only if you have no other way of paying. You are eligible for county assistance if you are unable to provide for basic necessities or you do not have enough income and resources to pay for hospital and other medical

expenses. In nonemergencies, you must also be a resident of the county to which you apply. There is no residency requirement for an emergency.

You can apply for county assistance at your county courthouse or someone there can tell you where to apply. After you fill out an application, the county will review it and decide if you are eligible for assistance. Although the county has sixty days from the date of your application in which to make a decision, you should be able to get help more quickly in emergencies. If there is an emergency, you should apply for county assistance immediately. For necessary but nonemergency medical care, you must apply for assistance at least ten days before receiving the medical services. If you are denied assistance, you may appeal and have a hearing before the county commissioners. If you are granted assistance, you may be asked to reimburse the county for some or all of the assistance granted. What you pay back must be a reasonable amount based upon actual resources available to you and must be over a reasonable period of time.

If you are denied financial assistance in any of the above programs, or are having problems and questions, consult a private attorney or contact the Idaho Legal Aid Services, Inc., office nearest you.

3. MEDICARE AND MEDICARE SUPPLEMENTAL PLANS

If you are eligible for Social Security benefits you are eligible for Medicare beginning at age 65. However, if you are disabled you will be eligible for Medicare after you have received 24 months' benefits. Even if you do not plan to retire at age 65, it is recommended that you apply three months before your 65th birthday to obtain the maximum benefits for the minimum cost and prevent delays in coverage.

Medicare is divided into two parts, Part A and Part B. Part A pays for inpatient and outpatient hospital care, inpatient care in a skilled nursing facility, home health care or hospice care. You are automatically enrolled for Part A if you receive any kind of Social Security benefits. You do not have to pay for this coverage but you are responsible for the deductible, certain hospital charges not covered by Medicare and some daily hospital charges.

Part B covers physicians and certain outpatient services, some home nursing visits and ambulance and other services. Since there is a premium charge for Part B, you have a choice whether or not to be enrolled. Under Part B you are responsible for the monthly premium, the \$100.00 deductible, 20% of the charges allowed by Medicare and any amounts not covered or allowed by Medicare. Certain lower-income elderly and disabled persons may be eligible for state assistance to pay their Part B premium under a program called the Qualified Medicare Beneficiary (QMB) Program. To qualify, you must be entitled to Medicare and have an annual income below \$8,868.00 for one person and \$11,940.00 for a couple. The income limits are adjusted annually. When resources are considered, a home, a car, burial plots, home furnishings, jewelry and life insurance are usually not counted. If you think you might be eligible for QMB assistance, contact your local Health and Welfare office or call 1-800-MEDICARE (1-800-638-6833) for information and a pamphlet explaining the program.

If you have any questions about Medicare, you should contact the Social Security Administration.

4. MEDICAID

In Idaho, medical assistance (Medicaid) is administered by the Department of Health and Welfare. Medicaid helps low-income people by paying for health care if they meet certain requirements. You may be eligible for Medicaid if you receive cash assistance from Aid to the Aged, Blind and Disabled (AABD) and Supplemental Security Income (SSI). Pregnant women and low-income families who would not otherwise qualify for TAFI may also be eligible for Medicaid. Some children with severe disabilities whose family income is too high may qualify under a special waiver.

If you qualify for Medicaid, you receive a medical card each month which you must always show to your doctor, hospital, or pharmacy. You may be asked to have one doctor or clinic perform or approve all of your health care through a Medicaid program called "Healthy Connections." If providers accept Medicaid, they must accept Medicaid's payment as "payment in full." They cannot ask you to pay part of the bill if Medicaid does not pay the full charge for a certain service. However, doctors and other health-care providers may or may not accept Medicaid.

Medicaid pays for certain services if they are medically necessary. Medicaid will pay for prescription drugs, diagnostic tests, treatment for medical and surgical conditions, medical equipment, contraceptive supplies and counseling for family planning. Medicaid will not pay for such things as acupuncture, biofeedback treatments, cosmetic surgery, weight control procedures and new procedures of unproven value. Medicaid also has limits on psychiatric services, abortion services, dental and chiropractic treatment, physical therapy and home health services. Children on Medicaid are entitled to a broader range of services under the Early Periodic Screening, Diagnosis and Treatment Program (EPSDT).

If you think you may be eligible for Medicaid, you should contact your local Health and Welfare office.

5. HILL-BURTON MEDICAL ASSISTANCE

If your income is below the current poverty income guidelines, you may be eligible for free hospital care under the Hill-Burton Act. This is a federal law that provides for the giving or lending of money to hospitals. In return these hospitals must give a certain amount of free care to low-income people. Under the law, Hill-Burton hospitals must post notices of this free care in their facilities. They can choose which services to cover and only hospital bills are covered, not private physicians' bills. Once the hospital has given out its yearly amount of free care, it can stop for that year. You can ask for this care at any time, even after you have received the services or your bill has been sent to a collection agency.

To receive these services, contact the business office or admitting office at the hospital and ask to fill out an application for Hill-Burton. The hospital has two working days to give you a written statement, called a Determination of Eligibility, which says either you can get the free services or that you have been denied and the reasons for the denial. If you think you have been denied wrongly or if you have questions concerning Hill-Burton, you should contact the U.S. Department of Health and Human Services Regional Office. This office can also give you a list of Hill-Burton hospitals in your area.

CHAPTER 6

HEALTH

A. SERVICES PROVIDED BY THE DIVISION OF HEALTH

The Division of Health, (208) 334-5945, of the Idaho Department of Health and Welfare has headquarters in Boise. It provides support services to the seven district health departments with offices throughout the state. Jointly, they are responsible for many programs providing preventive health services and communicable disease control. The spread of communicable disease is prevented by providing: (1) vaccines and immunization services against the vaccine-preventable childhood diseases for infants from the age of six weeks; (2) adult diphtheria and tetanus immunizations and boosters; (3) advice on the diseases travelers may encounter overseas; (4) the identification and contact tracing of most communicable diseases including tuberculosis, hepatitis, sexually transmitted diseases and other diseases transmitted from one person to another; and (5) education on how to prevent acquiring these diseases.

Other services provided include dental hygiene education, nutrition programs, food supplements (WIC program), diagnostic and rehabilitative services for children's special health problems (CSHP), clinics for sexually transmitted diseases and tuberculosis outpatient clinics. There are also health promotion/disease prevention programs which include heart disease and diabetes risk reduction, tobacco prevention and control, breast self-exam and mammography services and rape prevention education. All services are available throughout the state. Local health departments, hospitals, private clinics and some doctors' offices also provide educational programs on these and other medical subjects.

Advice on family planning, contraception and infertility, as well as direct clinic services, are available statewide. Charges for these services are based on your ability to pay and a moderately detailed financial history will be required. Check with your district health department for the availability of services and their costs. Pregnancy testing is also available. When tests are positive, referrals for prenatal care are made.

Most sexually transmitted diseases are treatable and many are completely curable with antibiotics. Some, such as herpes, can be treated to decrease symptoms and complications but cannot be completely cured. If you believe you may have such an infection or may possibly have been exposed to such an infection, contact your district health department outpatient clinic or your private physician for information, advice and services as necessary. In Idaho, any individual 14 years of age or older can be treated for a communicable disease without parental notification.

There can be medical and surgical complications associated with sexually transmitted diseases. Babies can be infected during pregnancy with syphilis, herpes, chlamydia and the virus which causes AIDS. Some sexually transmitted diseases cause infection of the woman's fallopian tubes, with occlusion and sterility resulting. A reminder here is that although the pill can protect from pregnancy, it does not protect from sexually transmitted diseases including AIDS. Condoms only partially protect against these diseases.

B. REPORTABLE DISEASES

Physicians, hospitals and laboratories must report certain communicable diseases to the Bureau of Clinical Preventive Services or to district health departments. As of March, 1986,

AIDS disease and positive human immunodeficiency virus (HIV) antibody tests, the full-blown AIDS disease, AIDS-Related Complexes (ARC's), which are the intermediate stages of the disease, and positive human immunodeficiency virus (HIV) antibody tests, must be reported so that contact investigations and adequate counseling of the presumably infectious persons can be undertaken. Along with hepatitis B, syphilis, gonorrhea and chancroid, AIDS and the positive HIV antibody are legally considered venereal diseases. It is unlawful to knowingly expose another person to HIV.

Testing for exposure to the HIV virus is available through all district health departments, Planned Parenthood of Idaho and private physicians. District health departments frequently charge a small blood-drawing fee, which can be waived. If you, or anyone you know, feel that you or they may have had contact with the virus in any way, or if you wish to have a prenatal or premarital blood test, check with any district health department, Planned Parenthood or your private physician. Great care is taken to maintain confidentiality of all information. Individual counseling is available on the significance of the test prior to any blood being drawn and as much counseling as the patient desires is available in the case of a positive test. Repeated counseling is always available if additional questions arise.

C. TEENAGE PREGNANCY

An unintended pregnancy is the responsibility of both the boy and the girl, but the primary consequences affect the girl. If you find yourself pregnant, get help at the earliest possible time. Discuss your pregnancy with a reliable source, for example, with your family, clergy, doctor, district health department or Planned Parenthood of Idaho. Get prenatal counseling as early as possible. Financial help is available from a variety of sources and information is available on those sources from your district health department and various church pregnancy counseling centers throughout the state. The Salvation Army maintains Booth Memorial Home, 1617 North 24th Street, Boise, Idaho, telephone number (208) 343-3571, for unwed mothers. A school, seventh through twelfth grades and a clinic are on the site. For further information, contact your nearest Salvation Army office. Also see Chapter 9, section F for paternity information.

Some school districts provide special programs for teen parents. Contact your local school district for local availability.

See Chapter 2, section C in this booklet for discrimination in education based on marital or parental status. Also, see Chapter 4, section G for paternity information.

D. ABORTION

In the 1973 ruling *Roe v. Wade*, the United States Supreme Court ruled that abortions are legal throughout the United States within certain guidelines. Following those guidelines, the Idaho Legislature defined the laws for this state.

In the first trimester, any woman may choose an abortion. In the second trimester, a woman may choose an abortion in cases of fetal defects or threats to the women's health or life. In the third trimester, a woman may choose an abortion only if two physicians concur that it is necessary to save the life of the woman or that the fetus would be unable to survive after birth. Abortions must be performed by a licensed physician. In the first trimester, they may be performed in a clinic or physician's office. In the second trimester, they must be performed in a hospital or surgicenter. In the third trimester, they must be performed in a hospital.

Women must be counseled about abortion and about other options 24 hours before the procedure is performed. If the woman is unmarried and under age 18, physicians must obtain one parent's written consent before an abortion procedure. Minors who do not feel they can obtain that consent may be able to ask a judge for consent to have the abortion. No notification or consent is required for husbands or partners.

E. STERILIZATION

Voluntary sterilization for both men and women is legal throughout the United States. Contact your district health department, Planned Parenthood of Idaho or a private physician for information.

Involuntary sterilization is legal only after approval by the court. A court hearing which includes testimony by professional experts and other witnesses is required.

F. NATURAL DEATH ACT

The Idaho Legislature passed the Natural Death Act to allow patients with a terminal condition to have life-sustaining procedures discontinued when they are unable to instruct their physician to stop such procedures.

Many people are concerned that they will not be able to control decisions about their health care if, as a result of injury or illness, they are unable to communicate with their health care providers. Advance Directives, such as Living Wills and Durable Powers of Attorney for Health Care, are legally enforceable documents through which an individual can control health care decisions that may arise in such circumstances.

In a Living Will you can specify your choices regarding the use of life-sustaining medical treatment in circumstances where you may be suffering from an incurable injury, disease or illness, a terminal condition, or if you are in a persistent vegetative state.

In a Durable Power of Attorney for Health Care you can appoint a person to make health care decisions for you if you are not able to make the decisions for yourself.

A Living Will and Durable Power of Attorney for Health Care may be prepared at any time. Forms are available at many medical centers or ask an attorney.

G. SMOKING

1. CLEAN INDOOR AIR ACT

The Clean Indoor Air Act was enacted to protect the public health, the environment and the rights of nonsmokers to breathe clean air. The Legislature passed this law (Idaho Code, 39-5501 through 5509) restricting smoking in public places and at public meetings to designated smoking areas. Smoking is prohibited in elevators accessible to the public. Violators are subject to fines not to exceed \$50.

2. CHILD SMOKING LAW

This law prohibits those under the age of 18 from purchasing, possessing or consuming tobacco products. Many schools offer substance abuse classes for juvenile offenders cited for breaking these laws. Those who sell tobacco and alcohol to minors can be cited. These citations carry a maximum fine of \$1000 and six months in the county jail. It is considered a misdemeanor. It also provides a gradual phaseout of vending machines accessible to minors. It is unlawful for anyone to sell or distribute tobacco products to minors, and a violation is also considered a misdemeanor.

H. ORGAN DONATION

Idaho law provides that anyone who is at least 18 years old may donate their organs, limit donation of their organs, or refuse to donate organs. The donation must be made by a document signed by the donor, or by another person and two witnesses who have signed at the donor’s direction and in his or her presence. However, a notation on a driver’s license or identification card that a person wishes to be a donor is sufficient to make that donation.

A person may revoke or amend the organ donation gift by a signed statement, by an oral statement in the presence of two witnesses, by any communication during a terminal injury or illness to a physician or surgeon, or by delivery of a signed statement to a specific donee who has received a document of gift. However, the gift must be revoked before death.

I. HEALTH SERVICES AVAILABLE IN IDAHO

1. THE PUBLIC HEALTH DISTRICTS

The seven Public Health Districts in Idaho provide education, information referrals and a variety of health services throughout the state. The following is a list of the District county offices.

PANHANDLE DISTRICT (I)

Bonner	Panhandle Health District 1020 Michigan Street Sandpoint, ID 83864 Phone (208) 263-5159
Benewah	Panhandle Health District 711 Jefferson St. Maries, ID 83861 Phone (208) 245-4556
Shoshone	Panhandle Health District 114 West Riverside Kellogg, ID 83837 Phone (208) 786-7474
Kootenai	Panhandle Health District 2195 Ironwood Court Coeur d’Alene, ID 83814 Phone (208) 267-5558

Boundary Panhandle Health District
7402 Caribou
Bonners Ferry, ID 83805
Phone (208) 267-5558

NORTH CENTRAL DISTRICT (II)

Nez Perce North Central Health District
215 10th Street
Lewiston, ID 83601
Phone (208) 799-3100

Latah North Central Health District
333 East Palouse River Drive
Moscow, ID 83843
Phone (208) 882-7506

Idaho North Central Health District
711 West North Street
Grangeville, ID 83530
Phone (208) 983-2842

Clearwater North Central Health District
P.O. Box 1239
Orofino, ID 83544
Phone (208) 476-7850

Lewis North Central Health District
P.O. Box 623
Kamiah, ID 83536
Phone (208) 935-2124

Canyon Southwest Health District
920 Main
Caldwell, ID 83605
Phone (208) 455-5300

Washington Southwest Health District
46 West Court Street
Weiser, ID 83672
Phone (208) 549-2370

Payette Southwest Health District
16 South Ninth Street
Payette, ID 83661
Phone (208) 642-9321

Gem Southwest Health District
1008 East Locust
Emmett, ID 83617
Phone (208) 365-6371

Canyon Southwest Health District
1223 7th Street South
Nampa, ID 83651
Phone (208) 465-8400

CENTRAL DISTRICT (IV)

Ada Central Health District
707 North Armstrong Place
Boise, ID 83704
Phone (208) 327-7400

Elmore Central Health District
620 East 8th Street North
Mountain Home, ID 83647
Phone (208) 587-4407

Valley Central Health District
703 North 1st Street
P.O. Box 1448
McCall, ID 83638
Phone (208) 634-7194

SOUTH CENTRAL DISTRICT (V)

Blaine South Central Health District
P.O. Box 162
Hailey, ID 83333
Phone (208) 788-4335

Twin Falls South Central Health District
1020 Washington Street North
Twin Falls, ID 83301-3156
Phone (208) 734-5900

Cassia South Central Health District
2311 Parke Avenue, Suite 4
Burley, ID 83318
Phone (208) 678-8221

Jerome South Central Health District
951 East Avenue H
Jerome, ID 83338
Phone (208) 324-8838

SOUTHEASTERN DISTRICT (VI)

Bannock Southeastern Health District
1901 Alvin Ricken Drive
Pocatello, ID 83201
Phone (208) 233-9080

Bingham	Southeastern Health District 412 West Pacific Blackfoot, ID 83221 Phone (208) 785-2160
Caribou	Southeastern Health District 55 East 1st South Soda Springs, ID 83276 Phone (208) 547-4375
Oneida	Southeastern Health District 220 Bannock Malad, ID 83263 Phone (208) 766-4764
Butte	Southeastern Health District 178 Sunset Drive Arco, ID 83213 Phone (208) 527-3463
Bear Lake	Southeastern Health District 455 Washington, #2 Montpelier, ID 83254 Phone (208) 847-3000
Franklin	Southeastern Health District 42 West 1st South Preston, ID 83263 Phone (208) 852-0478
Power	Southeastern Health District 590 ½ Gifford American Falls, ID 83211 Phone (208) 226-5096

DISTRICT SEVEN (VII)

Bonneville	District Seven Health 254 E Street Idaho Falls, ID 83402 Phone (208) 522-0310
Fremont	District Seven Health 45 South 2nd Way St. Anthony, ID 83445 Phone (208) 624-7585
Jefferson	District Seven Health P.O. Box 177 Terreton, ID 83450 Phone (208) 663-4860

Custer	District Seven Health P.O. Box 608 Challis, ID 83226 Phone (208) 879-2504
Madison	District Seven Health 314 North 3rd East P.O. Box 128 Rexburg, ID 83440-0128 Phone (208) 356-3239
Teton	District Seven Heal 30 West Depot Street Driggs, ID 83422 Phone (208) 354-2220
Lemhi	District Seven Health 104 South Daisy P.O. Box 280 Salmon, ID 83467 Phone (208) 756-2123
Jefferson	District Seven Health 380 Community Lane P.O. Box 508 Rigby, ID 83442-0508 Phone (208) 745-7297
Clark	District Seven Health 225 West Main P.O. Box 71 Doubois, ID 83423 Phone (208) 374-5216

CHAPTER 7 HOUSING

A. RENTING A HOME/APARTMENT

1. RENTAL AGREEMENTS

The rights and responsibilities of landlords and tenants are generally governed by a rental agreement between the parties. Rental agreements may be either oral or written unless the rental term is for a period longer than one year, in which event the agreement must be in writing. If the rental agreement does not provide for a specific period of time as the rental term, the agreement will be a “tenancy at will” and can be terminated by either party upon giving the other party written notice at least 30 days prior to the effective date of termination.

2. EVICTIONS

In addition to other remedies provided by a lease agreement, under Idaho law a landlord may, upon giving three days written notice, sue a tenant for possession of the leased premises if the tenant (1) stays beyond the agreed term of the lease without permission, or (2) fails to pay rent on time, or (3) violates other conditions of the agreement, or (4) engages in unlawful delivery, production or use of controlled substances on the premises.

If the tenant fails to pay rent or engages in unlawful delivery, production or use of controlled substances, a landlord may sue for possession of the premises and the court hearing will be held not sooner than 5 days and not later than 12 days after the tenant has been notified of the suit.

A landlord may also sue a tenant for monetary damages caused by a tenant’s failure to pay rent, failure to vacate the premises upon expiration of the rental term, or caused by other breach of the agreement. The landlord may also be entitled to recover attorney fees and costs of the suit.

Except when a tenant has abandoned the premises, a landlord cannot hold a tenant’s property or lock the tenant out without a court order.

3. RENT INCREASES

A landlord may increase the rent during the term of a lease only if the agreement expressly permits rent adjustments, otherwise the rent cannot be changed until the rental term expires. After the applicable rental term expires, the landlord is free to adjust the rent or change other provisions of the rental agreement.

Under a month-to-month rental agreement, the landlord may change the agreed conditions of the rental, including the amount of rent, only after written notice to the tenant given at least 15 days before the end of the monthly term and such change or increase in rent shall not become effective until the first day of the following month.

B. RENTING A MOBILE HOME LOT

The Mobile Home Park Landlord-Tenant Act is Idaho Code Section 55-2000 et seq. This Act has special requirements to protect persons who rent lots in a mobile home park on which

they place their own mobile home. It is intended to address the special circumstances relating to the separate ownership of the mobile home from the ownership of the lot on which it is installed. The Act does not apply to rental agreements where both the mobile home and the lot are rented from the landlord. The following summarizes the provisions of the Mobile Home Park Landlord-Tenant Act.

1. RENTAL AGREEMENTS

A tenant must be provided a written rental agreement at the beginning of the tenancy. The rental agreement must contain terms for payment of rent, park rules, names and addresses of managers and owners or their agents and terms regarding any deposits. The rental agreement shall not include provisions by which the tenant agrees to waive or give up rights or remedies, exit or entry fees, or unreasonable restriction on access to the park by guests of the tenant. Rental agreements renew automatically unless a landlord gives the tenant at least 90 days written notice of intent not to renew. The tenant is required to give the landlord 30 days written notice of the intent not to renew.

2. PARK RULES

Park rules are only enforceable if they are part of the written rental agreement. Park rules can be changed after 90 days written notice to the tenant. Rules may only be changed once every six months.

3. RENT INCREASES

A landlord may increase rents only after 90 days written notice to the tenants. Rental increases shall be the same throughout the mobile home park. The amount of rent charged within a mobile home park based upon lot or home size, amenities, lot location or otherwise system must be applied uniformly among all renter similarly situated.

4. EVICTIONS

A landlord may terminate the rental agreement for nonpayment of rent or repeated violations of park rules. The landlord must provide a three-day written notice to the tenant, giving the tenant that period to pay the rent or cure the violations. If the tenant does not comply with the three-day notice, the tenant will be given 20 days to vacate the mobile home park. The landlord may sue for possession of the rented lot if the tenant does not vacate the premises pursuant to the notice. A tenant has the right to written notice if the property will no longer be used as a mobile home park.

5. SALE OF A MOBILE HOME

A landlord cannot prohibit a tenant from selling a mobile home nor can a landlord require a tenant to move a mobile home solely because the home is for sale. The landlord may not receive a commission from the sale unless the landlord has acted as the seller's agent pursuant to a written agreement entered into voluntarily.

6. RETALIATION

A landlord shall not retaliate against a tenant for complaining in good faith to a governmental agency or to the landlord regarding the mobile home park, organizing or becoming affiliated with a tenant association, or retaining counsel or an agent.

C. PUBLIC HOUSING

A person with limited income may qualify for some form of public housing benefits to either rent or buy a home through programs established by the United States Department of Housing and Urban Development. Information regarding these programs is available through local city or county housing agencies or the Idaho Housing and Finance Association located in Boise, Idaho. The laws, rules and regulations governing each program may vary significantly and may differ from the general provisions of state law previously discussed.

D. FAIR HOUSING

A landlord cannot refuse to rent to a tenant because of race, religion or gender. A landlord may not discriminate against a person with a disability or families with children. There are a number of exemptions to these categories. Further information is available from the Idaho Human Rights Commission in Boise, Idaho and the offices of the United States Department of Housing and Urban Development (HUD) which for this region is located in Seattle, Washington. Idaho Legal Services, Inc., 310 North 5th, Boise, Idaho 83702, P.O. Box 1683, Boise, Idaho 83701 (208-345-0106) has a Fair Housing Initiatives Program funded by HUD and also investigates discrimination complaints.

E. REPAIRS

Under Idaho Code Section 6-320, a tenant may bring an action in court against a landlord for: (1) failing to provide waterproofing or weather protection of the premises, (2) failing to maintain electrical, plumbing, heating, ventilation, cooling and sanitary facilities in good working condition, (3) failing to keep the premises free from hazardous, unhealthy or unsafe conditions, (4) failing to return a security deposit, or (5) failing to install and maintain approved smoke detectors in good operating condition. Before starting a lawsuit, a tenant must give at least 3 days written notice to the landlord listing all of the deficiencies and requesting corrections. Notice must either be delivered to the landlord or his or her agent personally, left at his or her usual place of business, or it may be sent by certified mail, return receipt requested. If the landlord fails to correct all required repairs within three days after receiving the notice, the tenant may sue the landlord for an order requiring correction of deficiencies and for damages caused by the deficiencies. In certain circumstances, the tenant may be entitled to recover three times the amount of actual damages suffered. A tenant should not withhold rent or use other self-help methods to obtain repairs.

F. SECURITY DEPOSITS

A landlord may require a tenant to pay a security deposit pursuant to a rental agreement. The deposit is usually applied to unpaid rent or to any expenses incurred by the landlord for damages caused by the tenant to the property but does not include normal wear and tear to the rental unit. Refunds must be made within the time agreed upon by the rental agreement but in no event later than 30 days after the surrender of the premises by the tenant. Refunds of an amount less than the full deposit must be accompanied by a signed statement itemizing the amount retained, listing the expenses incurred and stating the reason for withholding any portion of the deposit. Any person who purchases apartments or other rental property shall be liable for security deposits made to the previous owner.

G. ADDITIONAL INFORMATION

Additional information is available from the following offices:

Idaho Legal Aid Services, Inc.
Locations in Boise (208-345-0106); Caldwell (208-454-2591);
Coeur d'Alene (208-667-9559); Idaho Falls (208-524-3660);
Lewiston (208-743-1556); Pocatello (208-233-0079) and
Twin Falls (208-734-7024).

United States Housing and Urban Development
Washington State Office
909 First Avenue, Suite #200
Seattle, Washington 98104-1061

H. BUYING AND SELLING A HOME (REAL PROPERTY)

Under Idaho law, any individual over the age of 18 years may purchase real property (land and permanent improvements) in her/his name. An individual who is unmarried will purchase real property in her/his name “as a single woman/man.” A married individual may purchase real property “as a married woman/man dealing with her/his sole and separate property” from her/his separate funds or together with a spouse “as husband and wife” with community property funds.

The name(s) that appear on the title are critical. If an individual purchases real property in her/his own name with separate property funds, the property remains sole and separate property. Separate property funds come from property owned before marriage or received by gift or inheritance after marriage.

When real property has both the husband's and wife's name on the title and is used as security for a new debt or is sold, the signatures of both spouses are required for a valid transaction. Most often both husband's and wife's signatures are also required when a spouse sells real property which is the sole and separate property of that spouse. Both signatures are required because a community property interest may have been created in the real property by using community property funds for its repair or improvement.

CHAPTER 8

MARITAL DISSOLUTION - DIVORCE

A. INTRODUCTION

Effective January 1, 1996, the State of Idaho no longer recognizes newly created common law marriages. Prior to January 1, 1996, individuals could create a common law marriage by a mutual assumption of marital rights, duties or obligations. Any common law marriage created prior to January 1, 1996, will still be recognized. However, after January 1, 1996, parties must obtain a marriage license and have a marriage ceremony performed. A marriage, whether ceremonial or common law, is ended only by the death of a spouse or formal annulment or divorce proceedings.

B. SEPARATION

In 1994, the Idaho Legislature amended the divorce statutes to create a decree of legal separation. The court may enter a decree of legal separation upon motion of either party, and the process is similar to the process followed in divorce actions. Under either a legal separation or divorce, a couple may elect to live separate and apart and ask the court to divide property, settle debts, provide custody and visitation, and obtain child support and spousal support.

C. ANNULMENT

An annulment differs from divorce in that the grounds for the annulment must exist at the time of marriage. Annulment is legally available if: (1) a person was under the age of legal consent (18); (2) one party was already married; (3) a party was of unsound mind; (4) the consent to the marriage was obtained by fraud; (5) the consent to the marriage was obtained by force; (6) either party was physically incapable of entering into a married state due to impotency. Although an annulment voids the marriage from the beginning, children born of the relationship are legitimate. Child support is treated similarly to child support in a divorce.

D. GROUNDS FOR DIVORCE

Idaho specifies eight grounds for divorce: (1) adultery; (2) extreme cruelty; (3) willful desertion; (4) willful neglect; (5) habitual intemperance (alcoholism); (6) conviction of felony; (7) permanent insanity; and (8) irreconcilable differences. The most frequently used ground for divorce is irreconcilable differences. Irreconcilable differences simply means certain differences have arisen that the spouses are unable to resolve. Irreconcilable differences are the “no-fault” grounds for divorce in Idaho.

E. BASIC PROCEDURES FOR DIVORCE

1. RESIDENCY REQUIREMENTS

Before you may file for divorce in Idaho you must have resided in Idaho for at least six weeks. This means you must be physically present within the state of Idaho with the intention to remain in Idaho indefinitely.

2. FILING THE COMPLAINT

Divorce proceedings begin with the filing of a complaint. The complaint is really a “wish list” of the filing party. It contains a request that the court system end the marriage and sets out in great detail what the filing spouse wishes the court to order in the final decree with respect to a division of property and financial obligations and care and support of the children of the marriage.

The spouse filing for the divorce must make sure the other spouse formally receives a copy of the complaint and the summons. The summons informs the nonfiling spouse that a divorce action has been filed and a written response, called an answer, must be filed within 20 days. “Formally receives” means either that a process server, such as a deputy sheriff, delivered the papers or the nonfiling spouse accepted service by signing a written statement that in fact the court papers were received.

3. RESPONDING TO A COMPLAINT

A spouse who has been served with a complaint for divorce is presumed to have knowledge of what the complaint contains. The complaint should be carefully reviewed and an appropriate plan of action should be decided upon. A spouse may either (1) decide that the complaint constitutes a fair resolution and do nothing, which allows the judge to enter a final decree of divorce identical to the complaint; or (2) file a written answer in which a reply is made paragraph by paragraph to the complaint.

4. COURT RESOLUTION

If the nonfiling spouse files an answer and the spouses cannot reach an agreement that satisfactorily resolves their differences, the case is set for trial. Because there may be a lengthy period of time between the time the complaint is filed and when the divorce goes to trial, it may be necessary to get temporary orders regarding child custody, child support and alimony. This can be done by having a court hearing prior to the time of trial.

A divorce proceeding is tried before a judge, without a jury. Both parties are provided with an opportunity to testify and present evidence and witnesses to convince the judge that the divorce decree ought to be worded as requested. The judge enters a final decision, called the decree of divorce, which may address any part of the marriage relationship, including future financial relationships, property ownership, responsibility for financial obligations and every imaginable situation which might arise regarding the children of the marriage until they reach age 18. If either party disagrees with the judge’s decision, appeal to a higher court is available.

F. DIVORCE MEDIATION

Mediation is a problem-solving process in which the parties themselves resolve the problems that arise because of the divorce. Parties may engage the services of a professional mediator, or in some counties will be required to mediate a custody dispute. Rule 16(j) of the Idaho Rules of Civil Procedure states that a court “shall” order mediation if, in the court’s discretion, it finds mediation is in the best interest of the children.

Many counties now have a process whereby contested cases are automatically referred to mediation under this rule. Such problems might include defining a parenting arrangement for the children, establishing support levels, or dividing marital assets and debts. As an impartial

third party, the mediator facilitates the negotiation between the parties so that a fair agreement may be reached. The mediation process is not a substitute for legal advice or for court involvement; however, it provides an alternative to a litigated hearing on disputed issues. The mediated agreement is usually presented to the court for approval.

G. WHERE TO GET LEGAL HELP

1. NEED FOR LEGAL ASSISTANCE

In most divorce actions it is important that each party has its own attorney. Your own attorney can most adequately protect your legal interests. Feel free to consult with several attorneys before you retain one to represent you. Some attorneys do not charge for the initial consultation. It is important that you have confidence in your attorney and are able to communicate freely with her or him.

You should discuss costs with your prospective attorney. Costs include the court required fee for filing the divorce as well as fees for the service of summons. How much your attorney charges for services depends upon the complexity of the divorce. Attorneys generally charge on an hourly rate, which varies from attorney to attorney depending upon experience. The more hotly contested and involved the issues are, such as child custody and property division, the greater the attorney time involved.

2. REPRESENTING YOURSELF

You may file your own divorce papers and represent yourself in the divorce action. This is advisable only where both parties agree to everything or the nonfiling party has disappeared and is unlikely to contest the divorce. Legal forms for divorces are available at no cost from Court Assistance offices in each county. Some community education programs provide classes on divorce law.

An excellent handbook, entitled "Making Financial Decisions When Divorce Occurs," is published by the University of Idaho Cooperative Extension Service and the Idaho Women's Commission. It is available for \$3.00 from the University of Idaho Cooperative Extension System, Agricultural Publications, Agricultural Communications Center, University of Idaho, Moscow, Idaho 83844-2332.

3. ASSISTANCE IN OBTAINING AN ATTORNEY

If you wish to hire a lawyer but do not know whom to hire, there are several avenues you may pursue. Getting a recommendation from friends and acquaintances is often helpful. The Idaho State Bar (208-334-4500) lawyer referral service maintains a list of attorneys who handle divorce matters. Additionally, lawyers do advertise. Many attorneys now list in the yellow pages the areas of the law they prefer to handle.

Idaho Legal Aid Services, Inc., handles a limited number of divorce cases for people below the poverty income guidelines. However, these cases must involve either spousal or child abuse. Call your nearest Idaho Legal Aid office for assistance.

The Idaho State Bar maintains the Volunteer Lawyer Program (208-334-4510), which assists individuals who cannot afford to pay for legal advice in obtaining a lawyer. Lawyers who participate in the program either charge nothing or bill for their services at a much reduced rate.

H. PROPERTY DIVISION

A presumption exists that all property acquired during the marriage is community property. This presumption can be overcome by establishing that the property was acquired as a gift or inheritance during the marriage. Community property includes military retirement benefits, disability insurance payments made during the marriage and pension plans earned during the marriage. Idaho is not likely to consider professional degrees to be community property, because other states do not. However, Idaho courts have not yet decided the issue.

Separate property generally includes that property owned by each spouse when the marriage began and property acquired by one spouse during the marriage by gift or inheritance. Separate property is sometimes converted during the marriage to community property as a result of the way the parties treated the property.

If community funds or community effort were used to improve the separate property of either spouse, the community may be entitled to reimbursement. If the parties commingle separate and community funds so that they cannot be traced, the funds become community property.

In dividing community property upon divorce, the court is required to divide the community property in a substantially equal fashion unless compelling reasons exist for a different division. A “substantially equal fashion” does not require an exact 50-50 division. Factors the court may consider include: the duration of the marriage; agreements between the parties; the age, health, occupation, income, vocational skills and employability of each spouse; the needs of each spouse; present and future earning capacity of each spouse; spousal support to be awarded; and retirement benefits available.

I. TAXES AND OTHER DEBTS

Community debts are generally divided in a substantially equal manner with consideration the property division. Debts incurred during the marriage, including any debts incurred by either spouse during separation, are community obligations. A creditor may enforce the debt on either spouse before or after the divorce as long as the debt was incurred during the marriage. However, if the divorce decree requires one spouse to pay the debt, the other spouse can seek reimbursement from that spouse by having her/him held in contempt through a court hearing. Filing of bankruptcy by one spouse does not relieve the other spouse of the debt. Child support is not dischargeable in bankruptcy.

It is not uncommon for taxing agencies to complete an audit of a joint tax return several years after divorce. By signing a joint tax return during the marriage, you will probably be held liable for the entire tax liability, plus interest and penalties, resulting from an audit of that return, even if your spouse agreed to pay all taxes arising after divorce.

Unless your spouse pays the joint liability, you will be held responsible for paying any unpaid amounts. If you have questions concerning whether you have any defense against being held liable in this situation, you should contact a tax professional or the taxing agency involved.

J. SPOUSAL MAINTENANCE

Before spousal maintenance (alimony) will be granted, the court generally must find that a spouse lacks sufficient property to provide for his or her reasonable needs and is unable to

support himself or herself through employment. In determining the amount of spousal maintenance, the court considers all relevant factors, including the marital property apportioned to that spouse and that spouse's ability to meet her or his needs independently; the time necessary to acquire sufficient education and training to enable the spouse seeking maintenance to obtain employment; the duration of the marriage; the age, physical and emotional condition of the spouse seeking maintenance; the ability of the spouse from whom maintenance is sought to meet her/his own needs while meeting those of the spouse seeking maintenance; and, the tax consequences to each spouse.

Spousal maintenance is deductible by the payer and reportable as income by the payee. A divorced spouse may still be eligible for group medical insurance coverage under the former spouse's employer. Please see Chapter 4, section F, #8 COBRA.

K. NAME CHANGE

You may have your name changed upon divorce. It is best to request the name change in the complaint or answer. You may change your name to any name you wish to use, as long as the change is not for fraudulent purposes.

L. CUSTODY

Custody issues may exist prior to, during and after a divorce. Parents are strongly encouraged to create a custody and parenting plan for the child for review by the court. The court retains the power, even after the divorce decree is issued, to review a custody or parenting plan and to issue custody orders. The court's concern is the best interests of the child, not the convenience or anger of the parents. Courts attempt to preserve the parent-child relationship despite the marital dissolution.

A presumption exists in Idaho that joint legal and physical custody is in the best interest of the child. Therefore, the court usually grants joint legal and physical custody of the child unless there are specific reasons to do otherwise such as one of the parents being found by the court to be a habitual perpetrator of domestic violence.

Legal custody involves the right of the parent to be involved in the decision-making, rights, responsibilities and authority relating to the health, education and general welfare of a child. Physical custody refers to with whom the child is physically residing. Joint physical custody does not necessarily mean that each parent will have physical custody of the child 50% of the time. More often one parent is granted primary physical custody, with the other parent given visitation rights.

Factors the court considers in awarding custody include: the wishes of the child's parents; the wishes of the child; the interaction and interrelationship of the child with parents and with siblings; the child's adjustment to home, school and community; the mental and physical health and integrity of all individuals involved; the need to promote continuity and stability in the life of the child; and, any history of domestic violence, whether or not that violence occurred in front of the children.

The court may grant sole legal and physical custody to one parent if the other parent is unable to care for the child, or if there is evidence of physical or mental abuse, alcoholism, drug addiction, abandonment or similar circumstances.

Grandparents who have established a relationship with their grandchildren have rights to visitation regardless of who is awarded custody of the children. If necessary, grandparents can obtain court ordered visitation periods.

M. CHILD SUPPORT

Both parents owe reciprocal duties to support their children. The amount of support required from each parent varies depending upon each parent's income.

Ordinarily the parent's community property interest in the financial resources or obligations of a spouse who is not a parent of the child will not be considered in setting a child support obligation, unless compelling reasons exist. Child support must cover a child's basic needs. Child support is payable until the child attains the age of 18. However, if the child is in high school, then support is payable until the child is 19 years old, or graduates, whichever is sooner.

The Idaho Supreme Court has adopted a set of guidelines for determining the proper amount of child support. These guidelines have also been adopted by the legislature. The basic child support obligation is based upon the gross income of both spouses, according to the rates set out in the schedules below:

<u>One (1) Child</u>	Per Month	Per Year
18% of the 1st \$10,000 of combined Guideline income	\$150	\$1,800
17% of the next \$10,000 of combined Guideline income	142	1,700
15% of the next \$10,000 of combined Guideline income	125	1,500
14% of the next \$10,000 of combined Guideline income	117	1,400
13% of the next \$10,000 of combined Guideline income	108	1,300
10% of the next \$20,000 of combined Guideline income	167	2,000
7% of the next \$20,000 of combined Guideline income	117	1,400
4% of the next \$20,000 of combined Guideline income	67	800
3% of the next \$20,000 of combined Guideline income	50	600
3% of the next \$20,000 of combined Guideline income	50	600
	\$1,092	13,100

<u>One (2) Child</u>		
26% of the 1st \$10,000 of combined Guideline income	\$217	\$2,600
25% of the next \$10,000 of combined Guideline income	208	2,500
23% of the next \$10,000 of combined Guideline income	192	2,300
22% of the next \$10,000 of combined Guideline income	183	2,200
20% of the next \$10,000 of combined Guideline income	167	2,000
15% of the next \$20,000 of combined Guideline income	250	3,000
10% of the next \$20,000 of combined Guideline income	167	2,000
7% of the next \$20,000 of combined Guideline income	117	1,400
6% of the next \$20,000 of combined Guideline income	100	1,200
6% of the next \$20,000 of combined Guideline income	100	1,200
	\$1,700	\$20,400

	Per Month	Per Year
<u>Three (3) Children</u>		
30% of the 1st \$10,000 of combined Guideline income	\$250	\$3,000
29% of the next \$10,000 of combined Guideline income	242	2,900
27% of the next \$10,000 of combined Guideline income	225	2,700
26% of the next \$10,000 of combined Guideline income	217	2,600
24% of the next \$10,000 of combined Guideline income	200	2,400
20% of the next \$20,000 of combined Guideline income	333	4,000
13% of the next \$20,000 of combined Guideline income	217	2,600
10% of the next \$20,000 of combined Guideline income	167	2,000
9% of the next \$20,000 of combined Guideline income	150	1,800
9% of the next \$20,000 of combined Guideline income	150	1,800
	\$2,150	\$25,800

<u>Four (4) Children</u>		
32% of the 1st \$10,000 of combined Guideline income	\$267	\$3,200
31% of the next \$10,000 of combined Guideline income	258	3,100
29% of the next \$10,000 of combined Guideline income	242	2,900
28% of the next \$10,000 of combined Guideline income	233	2,800
26% of the next \$10,000 of combined Guideline income	217	2,600
21% of the next \$20,000 of combined Guideline income	350	4,200
16% of the next \$20,000 of combined Guideline income	267	3,200
13% of the next \$20,000 of combined Guideline income	217	2,600
12% of the next \$20,000 of combined Guideline income	200	2,400
12% of the next \$20,000 of combined Guideline income	200	2,400
	\$2,450	\$29,400

<u>Five (5) Children</u>		
35% of the 1st \$10,000 of combined Guideline income	\$292	\$3,500
33% of the next \$10,000 of combined Guideline income	275	3,300
31% of the next \$10,000 of combined Guideline income	258	3,100
30% of the next \$10,000 of combined Guideline income	250	3,000
28% of the next \$10,000 of combined Guideline income	233	2,800
24% of the next \$20,000 of combined Guideline income	400	4,800
19% of the next \$20,000 of combined Guideline income	317	3,800
16% of the next \$20,000 of combined Guideline income	267	3,200
15% of the next \$20,000 of combined Guideline income	250	3,000
15% of the next \$20,000 of combined Guideline income	250	3,000
	\$2,792	\$33,500

Certain adjustments are made for alimony, preexisting child support obligations and health insurance. The court may require additional financial assistance to cover child care costs incurred by the custodial parent or may reduce the amount of support where there is shared physical custody. When both spouses have income the amount of child support awarded is prorated between the spouses in proportion to their gross incomes.

A copy of the Idaho Child Support Guidelines is available from the Administrative Office of the Courts, 451 W. State Street, Boise, Idaho 83720.

N. CHILD SUPPORT ENFORCEMENT

The parent most willing to pay child support is one who is actively involved with the child. The most important thing a custodial parent can do to insure prompt payment of child support is to maintain a cordial relationship with the paying parent and encourage visitation with the children. If the noncustodial parent has never been a good provider, it is unrealistic to expect that will change just because there is a support order requiring support payments. If the noncustodial parent fails to pay support, assistance is available through your local prosecuting attorney, the Health and Welfare Bureau of Child Support Enforcement and private attorneys.

Most child support orders issued in Idaho require the supporting parent to pay the Bureau of Child Support Enforcement, Department of Health and Welfare. If a support order requires payment through an agency, insist that the payments be made only through that agency to insure a complete and accurate record of payments. This is important for both parents.

Support orders issued in Idaho after July 1, 1986, likely contain "Notice of Income Withholding." This allows the custodial parent to enforce the order by an income withholding order issued by the court to the supporting parent's employer. If the supporting parent fails to pay support and the child support order includes a "Notice of Income Withholding," you may go to the clerk of court where you obtained the support order and request the issuance of an income withholding order. The clerk will provide you with the necessary forms. The only cost for this service is postage and envelopes.

If a support order does not contain a "Notice of Income Withholding," or if the supporting parent does not receive income in Idaho, support enforcement services are available through your local prosecuting attorney and the Health and Welfare Bureau of Child Support Enforcement, or you may hire your own attorney. The agency or attorney handling the enforcement of your support order needs your assistance in providing accurate, current information on the supporting parent, such as Social Security number, birth date, address, employment, assets, expensive hobbies and names of relatives and friends.

Many prosecuting attorneys are very effective in enforcing child support, although this varies from county to county, depending upon the staffing of the office and the resources available to the prosecutor. Some Idaho counties have a cooperative agreement with the Bureau of Child Support Enforcement which allows the prosecuting attorney to use the Bureau's support enforcement remedies. The main enforcement remedy used by prosecuting attorneys is an order requiring the parent to show cause why she/he should not be held in contempt for failing to pay support. If the nonpaying parent lives outside of Idaho, the prosecuting attorney can file a URESA petition to the parent's state, requesting that state to enforce the support order.

The Bureau of Child Support Enforcement, Department of Health and Welfare, charges a nominal fee for enforcement of support orders. The Bureau offers the same support enforcement services to nonwelfare clients as it offers to welfare clients. If the client is receiving welfare, all support owed to the client is assigned to the Bureau to offset the cost of welfare.

The Bureau enforces both child support and spousal support orders if the spousal support order is issued in conjunction with a child support order. If the supporting parent receives income, such as wages, unemployment benefits, or workers' compensation benefits, the

Bureau issues its own income withholding order to the supporting parent’s employer or other source of income.

The Bureau can also collect child support arrears from the supporting parent’s state and federal tax refunds. There is a \$25 charge for the tax refund offset, which is charged to the custodial parent and collected from the refund. If the supporting parent lives outside Idaho, the Bureau will either file a URESA petition to the other state, or will forward the support order to the other state for income withholding in that state. More information about services available through the Bureau can be obtained at your local Department of Health and Welfare office.

O. CHILD CUSTODY INTERFERENCE - PARENTAL KIDNAPPING

In Idaho any person who takes or keeps a child from the custodial parent commits the crime of child custody interference. There are limited exceptions to this.

P. MODIFICATIONS

Child visitation and custody, support and spousal maintenance may be reexamined by the court provided that there is a material and permanent change in the circumstances of either party. In fact, parenting arrangements often need reevaluation as the children grow and their needs change. However, absent evidence of fraud or overreaching by either party, property divisions or settlements will not be reexamined or modified at a later time by the court. Modification proceedings may be costly and even more so if the court determines that the proceeding was vexatious or harassing. In that event, the court may award attorney fees and costs against the party seeking modification. Modification proceedings should be undertaken with care and consideration.

Q. INTERSTATE DISPUTES

1. DIVORCE ISSUES

In those situations where a spouse in another state has filed against you in that state while you are a resident of Idaho, or where you, as the plaintiff, have filed first in Idaho and your out-of-state spouse refuses to be fully involved in the Idaho case, the result is known as a “jurisdictional conflict” between the court systems of the two states. Although it is possible to have two separate divorce cases going at the same time, the two court systems cannot handle the same issues. Issues can be distributed between the courts, with one state declaring the marriage at an end and the other state deciding custody and property issues, for example. In such a situation the assistance of an experienced domestic relations attorney is recommended to protect your interests in each state.

2. UNIFORM INTERSTATE CHILD CUSTODY JURISDICTION ACT (UCCJA)

Because interstate moves throughout a marriage and following divorce are now so common, the divorce courts are flooded with interstate conflicts. To assist in resolving the question of where the case should be tried, most states have passed the Uniform Interstate Child Custody Jurisdiction and Enforcement Act, or UCCJEA.

The UCCJEA is a set of rules which helps the court decide whether the children have enough contact and sufficient ties with a particular state to warrant that the state's court system should decide the issues of their best interest. The UCCJEA requires the court to consider the following matters before it assumes jurisdiction: has one parent "kidnapped" the child from the care of the other parent and taken the child into another state only to see if he or she can get a favorable custody ruling in that other state- Was there a custody or visitation decision previously entered in this or another state and is there now good reason to modify that decision under the laws of either state- Is there some emergency which justifies a court acting quickly, wherever the child is currently to be found- Is an earlier court order now out of date because of changed circumstances in the lives of the child or the competing parents-

One of the most important considerations in resolving jurisdiction under the UCCJEA is the length of time a child has been a resident of a particular state. Generally a court will consider taking jurisdiction if a child has been present in the state for longer than six months. It is assumed that during this six-month residency evidence will have accumulated concerning the child's relationship with the custodial parent and other relatives, performance in school, recreational interests, etc. This six-month standard is ignored in the case of a parental kidnaping where the child has been taken to another state, concealed and prevented from any contact with the court ordered custodial parent.

If both parents file close in time in two different states, the UCCJEA has a built-in system for determining which court takes control of a case and which court releases control. This involves the judges conferring with one another and deciding between them which court should hear the case.

CHAPTER 9

PROPERTY LAW

A. COMMUNITY/SEPARATE PROPERTY

Idaho is a “community property” state which means the husband and wife are equal partners in a marriage and both are to share equally in the marital assets and debts.

Property is categorized as either community property or separate property. Generally, all property acquired prior to marriage and any property received as a gift or inherited during the marriage is the separate property of the spouse who received it. With some exceptions, all other property is community property and to be shared equally by both parties to the marriage.

Generally, all earnings of either spouse during the marriage are community assets and generally debts of either spouse incurred during the marriage are community debts. An exception may exist if one spouse does not know about the debt. Because other exceptions and subtleties exist, questions as to whether property or debts are separate or community should be resolved with the assistance of an attorney.

Both husband and wife have the right individually to manage and control the community assets and to incur community indebtedness. However, both husband and wife must consent to the sale of the community home or other community real estate.

Debts incurred during the marriage, even while the spouses are separated, are community debts. Generally, both spouses are responsible for repayment. Although a court decree or an agreement between the spouses requires one spouse to assume responsibility for repayment, both spouses remain legally responsible to the creditor.

Any property, whether community or separate, may be divided in a voluntary settlement between husband and wife. Such an agreement can be signed at any time during the marriage, if the parties are separated, or as part of a divorce proceeding. Because a property settlement signed by both spouses is generally a binding agreement upon the parties executing it (absent circumstances of fraud or overreaching), care must be exercised in signing such an agreement.

B. PROPERTY SUBJECT TO COLLECTION BY TAXING AGENCIES

Idaho, unlike some community property states, allows taxing agencies and other creditors to seize community property to satisfy a premarital debt of only one spouse. Therefore, if you marry someone who already owes taxes, what you earn or acquire during marriage may be seized to satisfy your spouse’s premarital tax debts.

If your spouse has an unpaid child support obligation, the Internal Revenue Service and the Idaho State Tax Commission may collect your tax refund at the request of the State Department of Health and Welfare. This usually occurs when you file a joint tax return with your spouse, even if the entire refund is derived from taxes withheld from your wages.

Taxing agencies may also seize your refund to satisfy other outstanding federal and state obligations, such as student loans and court restitution orders. If your tax refund is seized to satisfy a nontax debt, you must contact the agency involved for information concerning whether any portion of your tax refund will be returned.

For further discussion on Property Law, please see Chapters 7, 8, 9 and 11 of this booklet.

CHAPTER 10

VICTIM ASSISTANCE

A. DOMESTIC VIOLENCE

In 1988, the Idaho Legislature recognized domestic violence as a serious crime against individuals and society which can be deterred, prevented, or reduced by legal intervention, including arrest and prosecution of the offending individual. Domestic violence is defined as the physical injury, sexual abuse, or forced imprisonment or threat of such, to a family or household member, or of a minor or adult in a dating relationship. The 1988 enactment of the Domestic Violence Crime Prevention Act provides a legal means for a victim of domestic violence to seek a protection order to prevent further incidents of abuse. Idaho law also provides for the criminal prosecution of batterers and criminal penalties for those who violate protection orders.

Domestic violence is far more widespread than previously believed and legal and protective resources are now available to anyone in this situation. Most communities offer shelter and counseling services to the victims of spouse or partner abuse and the local police and prosecutors are aware of services for victims of domestic violence.

For more information about domestic violence and victim assistance issues, contact the Idaho Council on Domestic Violence, at (208) 334-6512, or 800-291-0463.

A protection order, civil in nature, deals with many aspects of domestic violence. It can order the offender to restrain from committing acts of domestic violence; exclude the offender from the dwelling which the parties share or from the residence of the victim; order the offender to participate in treatment or counseling service; restrain the offender from contacting, molesting, interfering with, or menacing the children whose custody is awarded to the individual applying for the protection order; or restrain the offender from entering any premises when it appears to the court that such restraint is necessary to prevent the abuser from contacting, molesting, interfering with or menacing the petitioner or the children involved. If abusers violate the protection order they can be arrested and subsequently prosecuted criminally. A protection order will last for a specified period, generally three months, and can be renewed for additional terms not to exceed 1 year each if necessary.

If an immediate need for a protection order exists, in that “irreparable injury” could result from domestic violence if an order is not immediately issued, a protective order may be obtained without notice to the offender and within 24 hours or less of filing the petition.

To obtain a protection order, contact the clerk of your county court. Most county prosecutor victim coordinators and domestic violence programs also have these forms, also. Assistance and information is available at the shelters discussed in paragraph one below entitled “Shelters.” It is a crime to violate the terms of a protection order, carrying up to \$5,000 in fines and no more than a year in jail. Someone who violates a protection order can be arrested and jailed without a warrant.

1. SHELTERS

Many communities throughout the state have shelter homes and counseling services for victims of domestic violence, supported in part by funding from the Idaho legislature. Shelter homes are places where abused women and their children can go to get away from violence

they are experiencing in their home. If you are a victim of domestic violence, you do not need to stay in the abusive situation. Contact a women's center, church, or the police to find out the location of the nearest shelter or "safe home," call the Idaho 24-hour crisis line, 1-800-669-3176 or call the National Toll-Free Domestic Violence Hotline, 1-800-799-7233, a 24-hour service, for shelter referral, information or to discuss available options. You can get counseling, support and protection at the shelter home. If you wish to press charges against your spouse or partner, contact the police and do not let others discourage you from doing so. Violence in the home is no different from violence in the streets and ought not to be treated differently.

2. DOMESTIC VIOLENCE - THE OFFENSE

Although physical, mental and sexual abuse of a spouse does constitute battery, traditionally such violence in the home has not been viewed and treated as seriously as street violence. New laws have been passed which recognize the seriousness of family violence. In addition to the ability to charge a batterer with the criminal act of assault or battery, the domestic violence section of the Idaho Code provides for a separate crime recognizing the need to act upon domestic situations in a very serious manner. This applies to a "household member" - a person who is a spouse; former spouse; a person who has a child in common regardless of whether they have been married; or a person with whom a person is cohabiting, whether or not they have married or hold themselves out to be husband and wife.

In 1998, the Idaho Legislature enacted legislation which treats spousal abuse more harshly than typical battery by imposing stiffer penalties on the offender. Any household member who willfully inflicts traumatic injury upon any other household member is guilty of a felony. A traumatic injury is defined as a "condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by physical force." Felony domestic battery is punishable by a term of up to 10 years in prison and a fine of up to \$10,000.

Penalties for conviction of misdemeanor domestic assault or battery increase with subsequent convictions (misdemeanor domestic assault or battery is an offense which does not result in traumatic injury). A third conviction can be punished by up to 5 years in prison and a \$5,000 fine. Persons found guilty of domestic assault or battery are required to undergo an evaluation to determine whether counseling or treatment should be mandated.

Decisions to arrest lie within the discretion of the law enforcement officers. All who are arrested under domestic violence laws are issued "no contact orders" as a condition of bond and/or probation and there are designated penalties for violation of this "no contact order."

The 1998 Legislature recognized the impact that violence can have on children, and doubled the penalties when domestic violence is witnessed by a child and doubled the penalty for battery on a pregnant woman. Courts also consider domestic violence as a factor when making child custody decisions in divorces.

In addition to state prosecution, federal law provides that anyone convicted of any offense for which one of the elements is the use of force or the threat of use of force against a family member may not ever own, possess, transfer or buy a firearm or ammunition.

B. SEX CRIMES

1. RAPE

Rape is an act of oral, anal or vaginal intercourse with a female done without her consent. Intercourse with a female under the age of 18, whether she is a voluntary participant or not, constitutes statutory rape.

As of July 1, 1989, if a wife resists sexual intercourse, but her husband overcomes her by force or violence, or if she is prevented from resisting by threats or is given an intoxicant, the husband is guilty of marital rape.

Another category of rape, known as male rape, was enacted by the 1989 legislature. Nonconsensual penal penetration, however slight, of the oral or anal opening of another male constitutes rape.

Rape is punishable by a minimum of one year imprisonment and maximum life sentence.

Evidence of a rape victim's previous sexual conduct is not admissible in court unless the judge determines after hearing that the victim's prior conduct is relevant.

2. LEWD AND LASCIVIOUS CONDUCT WITH A MINOR

Sexual acts with children under the age of 16 are illegal and carry a punishment of up to life in prison. The perpetrator of lewd and lascivious conduct may be either male or female and the victim may be of either sex.

3. SEXUAL EXPLOITATION OF A CHILD

The solicitation of children for sex or for sexually-oriented photography or recording is illegal. A violation of this law is punishable by imprisonment up to 15 years, a fine up to \$25,000 or both.

Enticing a child under 16 away from home or school into a vehicle, building or enclosed area intended to conceal the child from public view is a criminal misdemeanor punishable by six months in the county jail, a fine up to \$1,000 or both. A second conviction constitutes a felony punishable by imprisonment up to five years.

The legislature also bans the use of a child in the commercial production of any material which involves the sexual exploitation of a child.

C. CRIMES AGAINST CHILDREN

1. INJURY TO CHILDREN

The inflicting of unjustifiable physical pain or mental suffering on a child or willfully allowing another person to do so is a crime. Pursuant to this law, you can be prosecuted if you allow a child to be physically or mentally abused by another, or put the child in a position to be physically or mentally harmed; e.g. DUI with a child in the car can be charged as injury to a child.

2. REPORTING OF CHILD ABUSE, ABANDONMENT OR NEGLECT

Idaho law requires the reporting of child abuse. Anyone having reason to believe that a child under the age of 18 has been abused, abandoned or neglected or who observes a child being subjected to conditions of neglect, is required by law to report such condition or circumstance to the appropriate law enforcement agency or appropriate institution. Failure to report is a misdemeanor punishable by up to six months in jail, a \$300 fine or both. Anyone who in good faith reports child abuse is immune from liability.

D. VICTIM ASSISTANCE

Pursuant to a 1985 law, victims of felony crimes have the right to participate in the criminal justice process. This participation includes the following rights: (1) to be treated with fairness, dignity and respect throughout the criminal process; (2) to be present at all criminal justice proceedings or juvenile proceedings including probation proceedings; (3) entitled to a timely disposition of the case; (4) the opportunity to communicate with the prosecution in criminal or juvenile offenses, and to be advised of any proposed plea agreement prior to entry of the agreement; (5) given prior notification of all hearings involving the accused; (6) the expeditious return of any stolen or other personal items confiscated by law enforcement agencies when no longer needed as evidence; (7) consultation with the investigator who prepares a report for the judge who will sentence the offender, including the opportunity to make a statement explaining the impact the offender's conduct has had on the victim; (8) the opportunity to testify under oath at the offender's guilty plea or sentencing hearing; (9) notification of any parole or commutation hearing and the opportunity to present evidence to the Commission for Pardons and Parole; and (10) notification if the offender escapes or is released from custody. The citizens of Idaho gave victims' rights a constitutional dimension when they overwhelmingly voted for the Idaho Victims' Rights Amendment in 1994.

The goal of a Victim Assistance Program is to improve the treatment of victims of crime by providing each victim with the assistance and services necessary to speed her/his recovery from the criminal act and to support and aid the victim as she/he moves through the criminal justice process. The focus of the program is comprehensive service delivery including notification of court dates and procedures, crisis intervention, trial/courtroom orientation, accompaniment, assistance with crime victims' compensation and restitution claims, and resource and referral information. The objective of the program is to help the victim assert their right to participate at all critical stages of the criminal justice process and to insure consideration of the impact of the crime upon the victim in all major criminal justice decisions and to ensure that victims are not forgotten in the criminal justice system.

E. CRIME VICTIM'S COMPENSATION

In 1986 the Idaho Legislature passed the Crime Victim's Compensation Act to assist victims who are physically and/or emotionally injured as the result of a crime committed against them. The act pays certain benefits, subject to statutory limits, to 1) direct victims for crime-related medical and mental health treatment costs and/or wage loss, 2) survivors of those killed as a result of crime for costs relating to funeral and burial of the deceased victim, and 3) immediate family members of homicide or sexual assault victims for crime-related mental health treatment costs. For more information contact the program at 1-800-950-2110 or 208-334-6080.

F. STALKING

Any person who willfully, maliciously and repeatedly follows or harasses another person or a member of that person's family is guilty of the crime of stalking and is punishable by imprisonment of up to one year or by a fine of not more than \$1,000 or both. A second or subsequent conviction occurring within seven years of a prior stalking conviction is a felony.

G. SEXUAL EXPLOITATION BY A MEDICAL CARE PROVIDER

Any person who represents him or herself as a physician, surgeon, dentist, psychotherapist, chiropractor, nurse or other medical care provider, who has sexual contact with a patient or client, is guilty of sexual exploitation by a medical care provider. Consent is not a defense to this crime. The crime is punishable by a fine of up to \$1,000 or a jail term of up to one year, or both. An action against the medical care provider must be initiated within two years after its commission.

H. DESTRUCTION OF JOINT PROPERTY

As of July 1, 1998, it is illegal to maliciously injure or destroy any jointly owned property without the permission of the joint owner, or any property belonging to the community of the person's marriage.

CHAPTER 11

WILLS AND PROBATE

A. WILL DEFINITION

A will is a written document that legally controls how a person's property is to be distributed after death. The person who has died is known as a "decedent."

Idaho law does permit holographic wills. A holographic will is a handwritten will. The law requires that the "material provisions" of the will be in the person's handwriting. In order to be certain that every part of this will is enforced, it is suggested that the entire will be completely in the handwriting of the person creating the will and that no portion of the will be typed or in the handwriting of another person. The will must be signed and dated to be valid, but it does not have to be notarized or witnessed.

However, the most common will used in Idaho is a more formal will. A will, other than a holographic will, must meet certain standards according to Idaho statutes and is usually prepared by a lawyer. For example, the will must be signed and dated and must be witnessed by at least two persons.

B. IF THERE IS NO WILL

When a person dies with no will (or dies "intestate" as the law calls it), the real and personal property of the deceased person is distributed according to a formula fixed by Idaho law. Without directions in a will, a judge appoints a personal representative and a guardian for minor children based upon priorities established by law. Unless the child is incompetent, any share of assets to be received by a child must be paid out to the child upon reaching age 18, regardless of the child's ability to handle the money.

In a will, it is possible to name a guardian for children who are under the age of 18, select a personal representative and create a trust extending beyond 18. A personal representative has the responsibility of collecting a person's assets, paying all debts and then distributing the property of the decedent to the persons entitled to receive it.

C. WHAT PROPERTY IS TRANSFERRED UPON DEATH

In a will, a person may dispose of all his or her separate property and, if married, his or her share of community property. "Separate property" is property acquired before a marriage or received by a married person as a gift or inheritance. "Community property" is all property accumulated during a marriage, except separate property. Income from separate property is also community property, unless the couple has entered into a written agreement that provides to the contrary. How the title to an asset is held does not determine whether an asset is a community asset or a separate property asset. For instance, a car that is purchased with community funds but titled in just the wife's name continues to be a community property asset.

Neither a husband nor a wife may completely disinherit his or her spouse, since Idaho law provides the surviving spouse a minimum "forced share" which can include up to \$4,000 to \$10,000 in a "homestead," up to \$3,500 of other assets and in some cases, additional assets.

D. CHANGING A WILL

There are methods for changing a written will. One method is to use a codicil, which is a formal, written amendment to a will. Another method is to write a new will which should expressly revoke the earlier will.

E. ESTATE TAXES

Assuming a person has not made gifts during their lifetime which used up a part of their lifetime gift tax/inheritance tax credit, an estate will avoid federal estate taxes as long as the estate is worth less than \$1,000,000. With proper tax planning, a married couple can transfer up to \$2,000,000 to their beneficiaries while having all of the money available during their lifetimes to support themselves. Please note, however, that the above two 2002 figures will change on a yearly basis until 2006 so it is suggested that you contact an attorney for updated figures after 2002. An estate tax is a transfer tax on the value of assets owned by a person at the time of death after debts and death expenses are paid. For estate tax purposes, the full face value of life insurance owned by the decedent is included in the calculation, even though another person is named as beneficiary of the life insurance policy.

F. PROBATE PROCEDURES IN IDAHO

When a person dies, a probate is usually necessary to transfer ownership of assets from that person's estate to their beneficiaries. The probate process may involve obtaining a court order determining who is entitled to receive assets from the decedent's estate. A probate estate consists of the assets owned by a person at the time of their death. Assets such as life insurance proceeds and individual retirement accounts are not included in a probate unless the policy named the person's estate as the beneficiary or unless the beneficiary named in the policy is not living.

G. COST OF PROBATE

It is generally necessary to hire a lawyer to probate an estate. The fee charged by an Idaho attorney is based upon the time and difficulty of the matter handled and may be calculated on the basis of the time required by the attorney to do the work required, may be based on a flat fee, or may be based upon a percentage of the value of the estate. As in any other business situation, it is important to discuss the fee arrangement before the work is actually started.

H. PROBATE AVOIDANCE

For a married couple in Idaho, probate can be avoided at the time of the first spouse's death if all the property owned by both spouses is community property (not separate property) and the married couple have signed a community property agreement specifying that everything is to go to the surviving spouse. This agreement must contain the legal description of all real estate and must be recorded prior to the first spouse's death in each county where real property is owned, as well as the county where the parties reside. The signatures of the parties must be acknowledged (similar to a deed). Please note, however, that this action may result in higher estate taxes due upon the death of the surviving spouse. It is therefore suggested that you consult with an attorney first.

Probate may also be avoided when the person who dies owns no real estate and no titled property (such as cars or savings accounts) and there are no debts or disputes over who is

entitled to receive the assets. If a person's estate is worth less than \$25,000.00 and does not include any real estate, an affidavit procedure may be available without the necessity of a probate. In addition, there are summary procedures available if the surviving spouse is the sole heir or if the value of the estate does not exceed available allowances and authorized expenses or debts.

I. LIVING (REVOCABLE) TRUSTS

A Living Trust, also known as a Grantor Trust or Revocable Trust, can be used by married persons or unmarried persons to avoid probate and to provide for asset management. In order to avoid probate, the trust must be properly drafted and must have all assets either transferred to the trust or payable on death to the trust. While such trusts are a legitimate estate planning tool in the hands of a competent attorney, because of their complexity and the need for transferring assets to the trust, they are generally more expensive than a will. When Living Trusts are marketed by telephone or door-to-door salespeople, they are frequently overpriced, poorly drafted and do nothing to complete the essential process of transferring assets to the trust.

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